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NORTHERN IRELAND OFFICE

GREAT GEORGE STREET,

LONDON SW1P 3AJ

(2)

Prime Minister.

You may like to glance - As you will see, your

Michael Alexander Esq
10 Downing Street
LONDON SW1

5 June 1981

Dear Michael,

Instructions were closely followed! There is still a deafening silence about the complaint made to the ECtHR last Saturday by a hunger striker.

PRISON PROTEST IN NORTHERN IRELAND AND EUROPEAN COMMISSION ON HUMAN RIGHTS *Paul - 9/6*

Our representatives visited Strasbourg on 3 June at the invitation of the Commission for what the latter called an informal examination of the complaints under Article 8 and Article 13 of the European Convention on Human Rights which they are now considering. The Commission raised, as they are bound by the Convention to do, the question of a friendly settlement. I enclose a detailed account of the discussion, to which it may be useful to add the following by way of commentary.

Our representatives were pressed rather harder than we had expected to enter into discussion of the substantive issues underlying the complaints. As instructed, they declined to enter into such discussion. They handed over the paper mentioned in my earlier letter, which appears as Annex A to the record of the meeting. That was just as well, because representatives of the applicant (who had seen the Commission in the morning) had clearly played down the question of political status, and had also made much of the myth that HMG did a deal to end the last hunger strike and had subsequently reneged it. The Commission Secretariat acknowledged that we sent them long ago copies of the statements published at the end of the last hunger strike. Those statements spelt out what had always been available to those ending the protest, and we shall have no trouble in showing that we have followed that procedure to the letter.

Two of the Prime Minister's points emphasised in your letter of 29 May came up in the discussions. First, it is clear that the Commission recognise that although they have now declared admissible the outstanding complaints under Articles 8 and 13, we remain free to use all the relevant arguments - including those which bear on admissibility - as the case proceeds. Second, the Commission have yet to decide whether they will regard the complaint under Article 13 (availability of effective remedy in respect of breach of the Convention) as being confined to the outstanding complaint under Article 8 (freedom of correspondence). We shall continue to argue that the complaint under Article 13 can relate only to the Article 8 complaint and as the note of the meeting indicates our position was made clear to the Commission's representatives.

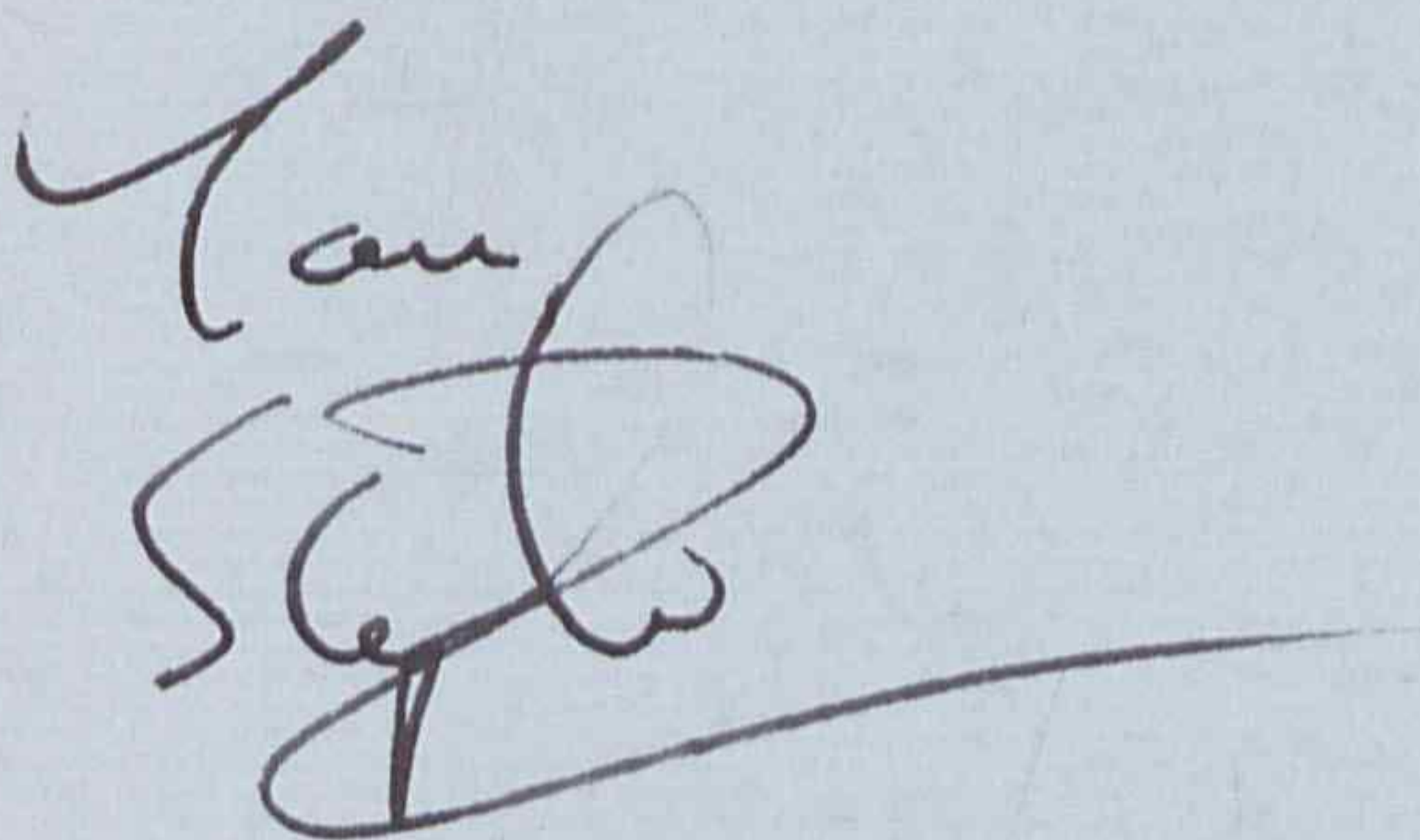
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The Commission are communicating HMG's attitude to the other side. If no more is heard about a "friendly settlement", the Commission will proceed with the examination of the substantive complaints, all of which would take some time.

There was one aspect of the meeting which was of interest. The complainant's representative gave the Commission the impression that political status was not the problem, and that they were interested in humanitarian aspects of the prison regime. Our representatives explained the truth of the situation by referring to statements made by and directly on behalf of the protesting prisoners, including the hunger strikers. The line taken by the applicants' representatives may be a pointer to the protesters' future stance. The Secretary of State will be circulating a paper to OD about the prison situation during the next few days.

I am sending a copy of this letter, and the enclosure, to John Halliday (Home Office), Roderic Lyne (FCO), David Wright (Cabinet Office) and Jim Nursaw (Law Officers Department).

A handwritten signature in black ink, appearing to read 'S W BOYS SMITH', with a long horizontal flourish extending to the right.

S W BOYS SMITH

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NOTE OF A MEETING WITH REPRESENTATIVES OF THE EUROPEAN COMMISSION OF HUMAN RIGHTS, STRASBOURG 3 JUNE 1981 AT 2.00 PM

Present:

Professor C A Norgaard	- Acting President	Mr D M Edwards	- Legal Advisers
Professor T Opsahl	- Member of the Commission		Foreign & Commonwealth Office
Mr H C Kruger	- Secretary of the Commission	Mr A H Hammond	- Legal Advisers
Mr O'Boyle	- Commission Secretariat		Home Office
		Mr N C Abbott	- Northern Ireland Office

McFeeley et al v The United Kingdom

1. Opening the meeting, Professor Norgaard explained that the Commission wished to establish whether there was any basis for a friendly settlement under Article 28(b) of the European Convention for the Protection of Human Rights and Fundamental Freedoms (the Convention) of the outstanding complaints under Articles 8 and 13 in the case of McFeeley et al v the UK. From their meeting with the Applicants' Representatives that morning, the two Commissioners believed that they had established that the Applicants wanted a friendly settlement on the basis of improved prison conditions: it was said that they were not seeking political status. Professor Norgaard reminded the meeting that a friendly settlement under the Convention need not be based on the issues in dispute in the outstanding complaints: they could in theory be based on prison conditions generally.

2. In reply, Mr Edwards said that although the complaints under Articles 8 and 13 had been declared admissible, we regarded our position as fully preserved and were ready to argue our case at a later date. The UK had no proposals for a friendly settlement. We assumed that if the Applicants had any such proposals they would be processed through the Commission in the normal way. If any such proposals appeared, we would naturally take them to our Ministers.

3. Discussion then turned to conditions in Northern Ireland prisons and the changes introduced in recent months. We accordingly judged it right to hand over our note, copy at Annex, "Protest at HM Prison Maze, Description of HMG's Position". Mr Edwards explained that, unlike the protesting prisoners, the Government had shown itself to be flexible in its readiness to improve the regime for all prisoners on humanitarian grounds. However, although flexible, there were certain points of principle on which the Government had not been, and would not be, prepared to move, viz no differentiation for particular groups of prisoners; and no ceding of control by the authorities to the prisoners over day to day life in the prisons. These principles were clearly stated on the first page of our note: the Commission had already rejected the motion of political status for certain prisoners in its Partial Decision last June. The Government, while standing firm on these issues, had of course made major improvements in the conditions of all prisoners in Northern Ireland as our note explained. Our handing over of this note did not imply that the points which it contained were in any way the subject of negotiation.

4. Professor Opsahl drew attention to the 32 page document "Regimes in Northern Ireland Prisons" which was made publicly available following the statement to Parliament by the Secretary of State for Northern Ireland on 4 December 1980 (this was the document placed in the House of Commons Library.) The Applicants' Representatives had told the Commission that the Government had not kept its word on the regime available to prisoners who ended their protests as explained in that and other documents and, perhaps, in oral undertakings. Was there another document? Professor Opsahl asked whether there had been a lack of communication between the Government and the protesting prisoners and whether clarification now would provide the basis for a friendly settlement.

5. Mr Abbott explained that, as Mr Atkins had told Parliament on 19 December, all prisoners in Maze and Armagh Prisons were given a note on 18 December explaining what would happen when the protest ended. This note, which had been reproduced in the Official Report for 19 December was consistent with the 32 page document. The Government had not gone back on its word: the regime available

to prisoners who ended their protests had been made wholly clear throughout. Mr Kruger confirmed that the Commission had been kept abreast of these developments.

6. Professor Norgaard pointed out that since nothing which had been said at the meeting provided the basis for a friendly settlement, he was not clear why the Government had apparently sought to expedite consideration of the outstanding complaints. Mr Edwards said that given the continuing prisons protest and the hunger strikes we had not wanted to frustrate the Commission's continuing examination of the case by concentrating on technicalities: we were not concerned at what stage our arguments on the merits of the outstanding complaints were heard. (Mr Kruger confirmed that this was clearly understood.) But Mr Edwards explained that the line we had taken on admissibility did not mean that we had proposals to put forward, nor had we implied this at any time.

7. Professor Norgaard doubted whether the Applicants would be prepared to put forward proposals for a friendly settlement unless the Government indicated its readiness to seek one. The Commission Team pressed the United Kingdom to reconsider its approach - bearing in mind particularly that the Applicants were said not to be seeking political status - so that an opening could be found on which a friendly settlement could be based. Could the final sentence of paragraph 2 of the note we had handed over (Annex A) be taken as an indication that proposals by the Applicants channelled through the Commission would be considered? Would the Government be prepared to elaborate further in writing on what regime would be available to prisoners who ended their protests? At this point Professor Norgaard said that the Applicants were looking for some sign of the Government's goodwill. Mr Edwards reacted strongly to this suggestion: the Government had already demonstrated its goodwill by the changes which had been introduced on the prison regime. There was no question of needing further gestures to show goodwill.

8. The UK party repeated that any proposals by the Applicants would be shown to UK Ministers. We could not say more; but the Commission and its procedures were of course taken seriously by the UK Government.

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If the Commission required further information about the regime available to prisoners in Northern Ireland, we would do our best to supply it; but the Commission were already aware of the Government's position on the issues of principle and on the key features of the regime. Mr Hammond emphasised that the note we had handed over was not in any way a basis for negotiation but was rather a record of what had been done by HMG. He also pointed out that the Government had demonstrated its flexibility through a number of important changes in the regime for all prisoners: it was the protesting prisoners who had been inflexible. Mr Hammond pointed out that there had been conflicting statements by people who purported to represent the protesting prisoners on what they were demanding: sometimes it appeared that the demand was for political status; at others for minor adjustments in the prison regime but it was our understanding that they were demanding the former. Mr Abbott pointed out that in their statement of 5 February, announcing the current hunger strike, the protesting prisoners had said in terms that they were "demanding to be treated as political prisoners".

9. Mr Kruger saw little prospect of a friendly settlement unless both sides were prepared to negotiate. It was in theory possible for a friendly settlement to be achieved by unilateral statements but in practice this was unlikely to yield results. The Commission Team noted that we had not come to negotiate. If there were no proposals for a friendly settlement, the Commission would move on to consider the merits of the outstanding complaints. In the case of the Article 13 complaints, this would probably not be before July. The complaints under Article 8 would await the judgement of the European Court of Human Rights in a Home Office case (Silver et al) which raised similar issues on prisoners' correspondence. Professor Opsahl suggested that the Article 13 issue might be wide enough to embrace issues other than those under Article 8. (It was possible, although unclear, that he might have been implying that the Article 13 issue was relevant to the hunger strikers' grievances.) Mr Hammond stressed that it was the Government's submission that Article 13 was relevant, if at all, only to the outstanding complaints under Article 8.

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10. Mr Kruger emphasised that the proceedings before the Commission were confidential. He also noted that it was essential for the status of the Commission that it confined itself to legal matters and did not become involved in political issues. Mr Edwards said that this was well understood.

11. In conclusion, Professor Norgaard said that the Commission would tell the Applicants' Representatives of the Government's position and remind them that it was open to them to put forward proposals for a friendly settlement if they so wished. Professor Norgaard explained that the Commission was at the disposal of the parties at any time until the case closed should they wish to reach a friendly settlement.

N.C. Abbott
N C ABBOTT

4 June 1981

PROTEST AT HM PRISON MAZE: DESCRIPTION OF HMG'S POSITION

Principles

1. HMG has consistently asserted certain principles in respect of prison administration on which it would not be prepared to compromise. These principles are:-

(i) No political or special category status for any prisoners. Any differentiation of treatment of a certain group or class of prisoners in Northern Ireland is objectionable under this principle. This principle was endorsed by the ECHR in its Partial Decision of June 1980.

(ii) The prison authorities must remain fully in control of the prison administration and of the major elements of day to day life in the prisons.

2. Subject to those principles, HMG has shown itself to be flexible and willing to introduce changes in the prison regime for both conforming and protesting prisoners. (The reference to protesting prisoners here relates to any prisoners who do not conform with prison rules irrespective of the alleged motivation for their crimes.) Most of the following changes were introduced after the Commission made its partial decision in June 1980. Irrespective of any protests, the Government is keeping under review the scope for improvements in the regime applicable to all prisoners in Northern Ireland.

3. Additional Privileges made available to protesting prisoners:

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|--|------------|
| (i) Provision of plimsolls, vests and shorts for exercise. | } 23.3.80. |
| (ii) Weekly letter in and out instead of monthly. | |
| (iii) Two visits a month instead of one. | |

Despite the action in January last of a number of protesting prisoners involving the destruction of cell furniture and damage to cells, all protesting prisoners have now been issued with beds and bedding, tables and chairs and the issue of other cell furniture continues. At the request of protesting prisoners, writing material and pens were provided as were additional books and newspapers.