



MO 19/3/12

as ~~Mr Lyban~~

Prime Minister

To note.

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You should be aware of a legal case involving the Ministry of Defence which could fuel the controversy over the use of baton rounds for riot control.

2. Mrs Kathleen Stewart is claiming damages against the Ministry of Defence over the death of her 14-year old son in Belfast in October 1976 when he was struck on the head by a baton round fired by a soldier in a patrol which was being stoned. She lost her case in the County Court in 1979. The Court accepted the evidence of the soldiers that there was a serious riot taking place and that the force used in the circumstances was reasonable. Mrs Stewart appealed to the High Court in Belfast and the proceedings were due to begin on 10th September. In the event one of the plaintiff's witnesses failed to appear and her legal adviser sought and obtained an adjournment. Crown Counsel did not object and the appeal stands adjourned until both sides agree on a further listing.

3. Crown Counsel is of the opinion that there is a danger that when the appeal is heard it could result in a judgement in favour of the plaintiff which would be in such terms as to call in question the use of baton rounds in a riot. A complicating factor is that Mrs Stewart is pursuing her case by means of a civil bill which rules out the possibility of an appeal to the House of Lords by the losing party. A judgement against the Ministry of Defence would therefore be binding on the lower courts and would also

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strongly influence the attitude of High Court judges, at least until we were successful in a similar type of case. Crown Counsel is now putting his views in writing and when these are available we shall clearly need to take stock of the situation. An out of court settlement would enable us to avoid the danger of wider repercussions provided there was no admission of liability; but there are indications that, mainly perhaps for propagandist reasons, Mrs Stewart would insist on a statement conceding that her son was an innocent party and this would be unacceptable to us.

4. At this stage we cannot be certain what the wider implications of an adverse judgement might be so far as the use of baton rounds is concerned. Much will clearly depend on the way in which the case for the plaintiff is conducted and on the attitude of the appeal judge; and I would certainly hope that even in these circumstances we would not be debarred from using the baton round in Northern Ireland. On the other hand, it is a reasonable assumption that if there is a hearing those who are campaigning against this method of riot control would seek to make as much capital as possible out of this case.

5. I must say that all this reinforces my personal concern about the possible use of baton rounds by police forces in Great Britain.

6. I am copying this minute to the Prime Minister, the Secretary of State for Northern Ireland, the Attorney General and Sir Robert Armstrong.

JN .

Ministry of Defence

15th September 1981