

*With the compliments of
the Legal Secretary*

H. STEEL

*Law Officer's Department,
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ROYAL COURTS OF JUSTICE
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Handwritten:
DMS
2/11

2 November, 1984

Dear Francis,

The Prime Minister's Private Secretary has passed to me a copy of your letter to her of 22 October 1984.

I was disappointed to see that you still appear to assume that a decision not to prosecute Mr Scargill has been taken on what I might call "public interest" grounds. As I have explained at some length, that is not so. The simple fact is that neither I nor the Director of Public Prosecutions has been presented with any satisfactory evidence on which we could found a prosecution of Mr Scargill for the sort of offence you envisage.

In the third paragraph of your letter you raise the general question of when there should or should not be a prosecution for a criminal offence which Parliament has created. This question is fundamental and is not restricted to statutory offences. It can, equally pertinently, be asked in relation to offences at Common Law. It is one which I, the Director of Public Prosecutions, Chief Officers of Police, and all others who prosecute in the public interest have constantly to address.

In February 1983 I issued my "Guidelines on the Criteria for Prosecution", a copy of which I now enclose. They were circulated to all County Prosecuting Solicitors and to other prosecuting authorities (such as Customs and Excise) and also, by the Home Secretary, to all Chief Officers of Police. My purpose in issuing this informal guidance was to help to promote consistency in decision-taking even in advance of the new arrangements for prosecutions which we were then considering in the light of the report of the Royal Commission on Criminal Procedure. As you know, we have now decided to create an Independent Prosecution Service under my control (through the DPP), and a Bill will be introduced for this purpose in the forthcoming session.

/When



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When that Service comes into operation, it will of course observe my Guidelines, which will also continue to be observed by other prosecuting authorities.

My Guidelines are indeed no more than guidance as to the relevant principles and considerations and they are, in the nature of things, not enforceable in the courts. But I emphasise that, so far as concerns a possible prosecution of Mr Scargill for the type of offence which we have been discussing, the result would be no different if they were. The question in Mr Scargill's case, as I have repeatedly explained, has been one of sufficiency of evidence; and considerations relating to the discretion whether or not to prosecute (as discussed at paragraphs 8 and 9 of the guidelines) just have not arisen.

Yours Gra, Michael

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