

CONFIDENTIAL

File A44



ces. Ministers in charge  
depts

10 DOWNING STREET

+ CO  
Tsy  
Tsy S

FPC  
LA/FCO

From the Principal Private Secretary

21 December, 1981

Cabinet

Dear Jim,

LEGAL ADVICE

The Prime Minister has seen the Attorney General's minute of 14 December 1981 and she has indicated her general agreement with his views on the provision of legal advice.

I am sending copies of this letter to the Private Secretaries to all Ministers in charge of departments, and to the joint Heads of the Civil Service, the Treasury Solicitor, First Parliamentary Counsel, and the Legal Adviser to the Foreign and Commonwealth Office.

Yours sincerely,

Alvi Whitman.

Jim Nursaw Esq.,  
Attorney General's Chambers.

CONFIDENTIAL

AK



01-405 7641 Extn 3201

Prime Minister.

Words of wisdom from

the Attorney.

*[Handwritten signature]*

*[Handwritten initials]*  
15xii

ROYAL COURTS OF JUSTICE  
LONDON, WC2A 2LL

*[Handwritten signature]*

14 December 1981

ALL MINISTERS IN CHARGE OF DEPARTMENTS

LEGAL ADVICE

I have been increasingly concerned of late about the treatment of advice from the Law Officers and related matters.

2. Problems occur most often where one or more of the Law Officers gives written advice to a Minister on a topic which later on has to be raised with other colleagues, or with Ministers generally for a collective decision. In such cases the substance of the advice often has to be passed on by any recipient, since we may well not be aware, when we give it, how wide a circulation might eventually be appropriate.

3. Normally what happens is that our advice is summarised in the ensuing Ministerial correspondence; and my present concern is that these summaries have recently been wrong, incomplete or misleading. This, of course, only makes for more work by way of correction and it can delay the policy-making process.

4. It is not surprising that problems occur when Ministers concerned may not be given our full advice. Some of the questions which are put to us are very complex and as a result it may be difficult or impossible to get the message across using other, and fewer, words than those we have used ourselves in giving our answers (which we have always kept as concise as possible, within the limits of a clear exposition).



ROYAL COURTS OF JUSTICE  
LONDON, WC2A 2LL

01-405 7641 Extn 3201

- 2 -

5. I suggest that in most cases this problem can be dealt with very simply, by annexing a copy of our advice to the relevant correspondence. This will not preclude a summary of the conclusions reached; and this will be much less prone to risk than now, since the detailed material will be available with it.

6. This suggestion is equally valid for correspondence signed by officials in this Department where such correspondence records the Law Officers' views. Where for reasons of urgency only verbal advice is given, wherever possible the Law Officer(s) or the official concerned in this Department should be consulted on the text of any Ministerial correspondence from other Departments which records that advice. Similarly - and this is important - any draft papers for collective discussion should be cleared with us if they deal with Law Officers' advice.

7. I believe that a similar difficulty may arise in relation to advice given by Departmental lawyers. There is no reason in principle why these guidelines should not apply also in respect of legal advice given within Departments, especially where Ministers are consulted by their officials on matters on which lawyers in their Departments have already expressed a view. While I recognise that suitable working arrangements to meet this difficulty are an internal matter, I do have an interest in that

/lack



ROYAL COURTS OF JUSTICE  
LONDON, WC2A 2LL

01-405 7641 Extn

- 3 -

lack of them does not ease the Law Officers' task when a matter is subsequently referred to them.

8. There will be some, but I think few, cases where these guidelines will not provide an appropriate solution. The important factor is that it is very risky to attempt to summarise legal advice given by others if the full advice is not provided at the same time.

9. There have also come to my attention recently a number of important problems which "cried out" for advice from Departmental lawyers, where their help was either not sought at all or not sought as early as it could have been. In my view, it ought to be possible for senior officials to single out cases with a legal element with greater speed and consistency than appears to be the rule at present, and take advice from their lawyers accordingly. In this context may I remind colleagues of paragraph 23 of "Questions of Procedure for Ministers" (24 May 1979) which concerns the taking of advice from the Law Officers. If Departmental lawyers are not consulted at the proper time, it is unlikely that the Law Officers in their turn will be able to give the assistance expected of them when an issue comes their way.

10. This minute is sent to all Ministers in charge of Departments. It is also copied to the Joint Heads of the Civil Service, the Treasury Solicitor, First Parliamentary Counsel, and the Legal Adviser to the Foreign Office.

*M.H.*

17/12/81

Subject to the relevant office.

The above information is for your information only and should not be used for any other purpose.

If it is not possible to contact the relevant office, please contact the relevant office.

This information is for your information only and should not be used for any other purpose.

The above information is for your information only and should not be used for any other purpose.

If it is not possible to contact the relevant office, please contact the relevant office.

This information is for your information only and should not be used for any other purpose.

The above information is for your information only and should not be used for any other purpose.

If it is not possible to contact the relevant office, please contact the relevant office.

This information is for your information only and should not be used for any other purpose.

The above information is for your information only and should not be used for any other purpose.

If it is not possible to contact the relevant office, please contact the relevant office.

This information is for your information only and should not be used for any other purpose.

The above information is for your information only and should not be used for any other purpose.

If it is not possible to contact the relevant office, please contact the relevant office.

This information is for your information only and should not be used for any other purpose.

The above information is for your information only and should not be used for any other purpose.

If it is not possible to contact the relevant office, please contact the relevant office.

This information is for your information only and should not be used for any other purpose.

The above information is for your information only and should not be used for any other purpose.

If it is not possible to contact the relevant office, please contact the relevant office.

This information is for your information only and should not be used for any other purpose.

The above information is for your information only and should not be used for any other purpose.

17/12/81



FORWARD MCSA SET  
HOME COPY OF NOTICE

5 DEC 1981

11 12 1  
2  
3  
4  
5  
6  
7  
8