

ce MMB/AR

file



cc: Mr. Alison

10 DOWNING STREET

From the Private Secretary

18 October 1983

Thank you for your letter of 17 October with which you enclosed briefing for the Prime Minister's meeting with Mrs. Mary Whitehouse. Following her conversation with Mrs. Whitehouse, the Prime Minister has given consideration to the issues set out in the brief. She remains unconvinced by the Home Office approach to the question of obscenity legislation in general and Mr. Graham Bright's Bill in particular. She agrees with Mrs. Whitehouse that piecemeal legislation on obscenity is unsatisfactory and that the Government ought to be bringing forward proposals for a general reform of the Obscene Publications Acts, which she believes to be ineffective. The Prime Minister recognises that this has traditionally been a matter for Private Members' legislation but believes that the time is right for a Government initiative which, in her view, would command a majority of the House of Commons.

On Mr. Graham Bright's Bill on video recordings, the Prime Minister has considerable sympathy with the view that controls should be based on a 'list' approach rather than a classification approach. She considers that there is a difference in kind between cinema films and video recordings which would justify a difference of approach. For example, while there are stringent controls on films classified Restricted (18) which guarantee that they will not be seen by children, no such guarantees exist for video recordings when they are shown in the home. Mrs. Thatcher accepts that the 'list' approach is not perfect; she believes nevertheless that it would catch a far greater proportion of the offensive material which is at present freely available. In this context she has noted that such an approach is embodied in legislation in Sweden and certain American States and has asked if there is any evidence of the effectiveness of that approach.

Even under the licensing system proposed under Mr. Bright's Bill Mrs. Thatcher considers that a more stringent approach could be taken. In this context, she wonders what arguments led the Home Secretary to reject the proposal that the Home Office should issue guidelines to the licensing body for video recordings envisaged in Mr. Bright's Bill.

/ The Prime

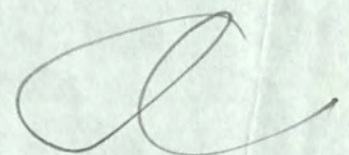
CONFIDENTIAL

-2-

The Prime Minister would be grateful for an urgent discussion with the Home Secretary on these issues and we shall be in touch to arrange a time during the course of this week.

Timothy Flesher

Hugh Taylor, Esq.,
Home Office.

A handwritten signature in dark ink, appearing to be a stylized 'R' or similar character, located in the lower right quadrant of the page.

CONFIDENTIAL

PRIME MINISTER

Your Meeting with Mrs. Whitehouse

Attached is rather voluminous briefing from the Home Office for your meeting with Mrs. Whitehouse tomorrow. The main points which it makes are as follows:-

Mr. Bright's Bill

The Bill which Graham Bright is introducing to control video films proposes a licensing system for video recordings which will make it an offence to sell or to rent an unlicensed video. The licensing function will be carried out by the British Board of Film Censors. Films classified restricted (18) would only be sold or rented from premises to which those under 18 had no access.

Obscenity Laws

The Home Secretary's view is that while the obscenity laws are deficient, at present there is no consensus for new legislation, especially since this area has traditionally been regarded as one for a free vote of the House. Given this he thinks that it is better to make progress in areas e.g. video recording, where there is general support for legislation.

Mrs. Whitehouse's Approach

Mrs. Whitehouse and her organisation would prefer a radically different approach. They want new obscenity legislation which would define what was prohibited by a list of specific activities the depiction of which would be illegal. Mrs. Whitehouse is opposed to a licensing arrangement since she believes that the licensing bodies have been unduly lax.

/ The

The Home Secretary's objection to the so-called list approach is that it is impossible to ban the depiction of certain acts per se. Otherwise the extremely violent scenes in e.g. Macbeth or King Lear would have to be banned. The criterion of "offensiveness" has to be introduced, therefore, even under the system proposed by Mrs. Whitehouse, which as we know is a lawyer's paradise. Moreover, by listing that which is illegal we would automatically legalise that which is unlisted.

The real problem I suspect is that I rather doubt that there is a Parliamentary majority for Mrs. Whitehouse's approach (or indeed any other) unless the Government broke with the traditional approach and introduced its own Bill.

17 October 1983

E.R.

THE MINISTER'S MEETING WITH MRS WHITEHOUSE: SUMMARY OF BACKGROUND AND LINE TO TAKE
 (Full briefing note attached)

1. Mrs Whitehouse is likely to make the following main points in discussion:

(i) that piecemeal legislation on obscenity is unsatisfactory; *Agreed*

Agreed (ii) that general reform of the Obscene Publications Acts 1959 and 1964 is over-due: they are ineffective; and the "deprave and corrupt" test in the 1959 Act should be replaced by a "list" system setting out specific acts of violence and sexual activity or perversion, the depiction of which should be illegal;

(iii) that as far as the Video Recordings Bill is concerned:

(a) controls should not depend on "classification" by a body such as the British Board of Film Censors but on a general formula/"list" approach;

(b) she is critical of the British Board of Film Censors which, she feels, has presided over a decline in moral standards;

(c) if her proposed approach is not adopted, clear guidelines should be issued to the designated body on what material should be excluded from classification;

(d) "Restricted (18)" material should not be available on video because of her concern that children would gain access to it. (The "R (18)" classification was introduced by the BBFC last year for films of an explicit nature which, in their view, should be shown only under club conditions to people over 18.)

E.R.

The following points might be made in response:

- (i) that there is no immediate legislative opportunity for a major reform of the Obscene Publications Act, nor is the Government convinced that the necessary consensus for such reform exists;
- (ii) Mr Bright's Bill (details in paragraph 9 of briefing below) therefore offers a real and welcome opportunity to strengthen the law in a particular area of considerable current public concern;
- (iii) there is a real risk, however, that as a Private Member's Bill the measure will not succeed unless it commands wide-spread support;
- (iv) the difficulty with the approach suggested by Mrs Whitehouse is that on the one hand defining the formula and associated list is bound to be controversial and the more restrictive it is the more controversial it will be; and on the other hand (perhaps the strongest argument) because the formula or list would be 'exclusive', pornographers would be able to exploit any areas inadvertently omitted from the list or any vagueness in the formula. Getting the legislation right would therefore be a difficult, controversial balance which might not in the end prove effective. The virtue of the controls envisaged by Mr Bright is that they would operate directly on offensive material.
- (v) the BBFC are really the only organisation that can at present carry out effectively the classification role under the Bill. There are welcome signs that they accept the need for strict standards to be applied. If their standards become publicly unacceptable the Home Secretary would have power to remove the designation and make fresh arrangements;

E.R.

- (vi) issuing guidelines to the designated body on what material should be excluded from classification would represent a dangerous and highly controversial step towards government censorship;

- (vii) after sympathetic consideration, the Ministers' present view is that the Bill ought not to prohibit absolutely the supply of "R (18)" video recordings; but an important safeguard in the Bill would be that "R (18)" video recordings should be confined to premises to which people under 18 are not admitted.

REFORM OF THE OBSCENE PUBLICATIONS ACTS 1959 AND 1964

1. Mrs Whitehouse has for long argued that the Obscene Publications Acts 1959 and 1964 are ineffective and should be fundamentally reformed. The test of obscenity in these Acts is that the article concerned, if taken as a whole, has a tendency to deprave and corrupt persons who are likely to read, see or hear it, subject to a saving for those articles which are for the public good as in the interests of science, literature, art or learning. Mrs Whitehouse broadly favours the replacement of this test with a "list" system setting out specific acts of violence and sexual activity or perversion, the depiction of which would be illegal. In her letter to the Home Secretary of 15 September Mrs Whitehouse argues that, in view of the size of the Government's majority in Parliament, there is no reason why, given the political will, it should not be able to secure approval for such a measure.
2. Ministers have acknowledged that there are inadequacies in the Obscene Publications Acts. For example, it is probably impossible to apply literally the test of "deprave and corrupt". However, in their view, it is an exaggeration to say that the legislation is entirely ineffective. In 1981, the most recent year for which figures are available, there were 221 convictions, as well as a number of successful forfeiture proceedings under the Obscene Publications Acts; and the threat of prosecution hangs over those who deal in pornographic material. On the whole, much of the most extreme material seems to be caught by the Acts. Moreover, the Obscene Publications Acts should not be seen in isolation; they are buttressed by a number of other Acts dealing with specific areas of concern.
3. Mrs Whitehouse's concern, on the other hand, would seem to be first, that the general legislation ought to catch very much more material than it does at present; and ^{second,} that the specific pieces of legislation passed since 1979 dealing with indecent public displays, cinema clubs and sex shops, could be regarded as recognising the legitimacy of certain forms of publication or display (i.e. by merely controlling rather than banning them). What is fundamentally at issue is whether comprehensive new legislation of the kind Mrs Whitehouse seeks would work and, given the wide differences of opinion that exist on the direction of any new legislation should take, whether it is realistic to expect any such legislation to secure the approval of Parliament.

E.R.

The Home Secretary considers there would be very real difficulties in securing even broad agreement about the way the obscenity legislation should be reformed. His view is that there would be widely diverging and strongly held views on the form any general overhaul should take, and that any proposals for wide-ranging legislation whether in a more restrictive or more libertarian sense would be bound to stir up substantial opposition not only within Parliament and outside, but ^{possibly} also within the Conservative Party. There is a strong possibility that any proposed legislation would emerge from Parliament in a very different form than that in which it was introduced; and that such changes might well not be in the direction Mrs Whitehouse would wish.

4. For example, there would no doubt be some support for Mrs Whitehouse's broad approach. But others would favour reform along the much more liberal lines proposed in the Williams' Committee Report. Support for the Williams' Report's recommendations was by no means confined to a minority of libertarians; the police and a number of reputable religious and other groups also commented favourably. There would no doubt also be a variety of other positions as well as extensive debate on the detail of any proposals.

5. On matters so closely affecting issues of individual conscience, it is the usual practice to allow Ministers a free vote. This is not a conclusive consideration, but, taken in conjunction with the apparent lack of support for any specific approach to this problem, it suggests that a general reform of the Obscene Publications Acts is not practicable at the present. The Home Secretary has said, however, that he would not wish to rule out this possibility if circumstances were to change.

Present strategy

6. Ministers have tried to persuade Mrs Whitehouse, therefore, that it is not a matter of all or nothing. The Government's strategy has been to leave unamended the present Obscene Publications Acts (for the reasons given above) but to ensure that the law is strengthened as necessary by the introduction of specific legislation dealing with areas which give rise to particular concern and which can be tackled without attracting the sort of problems associated with wider-ranging reform. In recent years, the Government has introduced powers in the Local Government (Miscellaneous Provisions) Act 1982 to deal with sex establishments and lent support to private members' measures on indecent displays (the Indecent Displays (Control) Act 1981) and on bogus cinema clubs (The Cinematograph (Amendment) Act 1982). A good example of this

/approach

E.R.

approach is the support the Government is giving to Mr Graham Bright's private member's Bill on the control of video recordings. This strategy is in line with the Government's manifesto commitment on obscenity which reads:

"We will also respond to the increasing public concern over obscenity and offences against public decency, which often have links with serious crime. We propose to introduce specific legislation to deal with the most serious of these problems, such as the dangerous spread of violent and obscene cassettes."

7. The Home Secretary considers that it would be sensible to maintain this approach. He believes that the introduction of, or the provision of Government support for, any further legislation necessary to deal with specific problems of particular concern offers a better prospect of curbing problems in this area within a reasonable time-scale than would the introduction of legislation to reform the Obscene Publications Acts.

MR BRIGHT'S VIDEO RECORDINGS BILL

8. Ministers have made it clear that they fully share the concern of Mrs Whitehouse and very many other people about the spread of objectionable video recordings. The manifesto included a commitment to introduce legislation (see paragraph 6 above) and the Home Office had been giving detailed consideration to the options. Meanwhile Mr Graham Bright, who came top in the Ballot for Private Members' Bills, decided to take up this subject and introduced a Bill.

Outline of the Bill

9. It is proposed that the Bill (which is a Government handout and is to be considered by L Committee on Wednesday 19 October) will make it an offence to supply commercially (including to sell or to rent), or to offer to supply commercially, a video recording which has not been classified by a body designated for this purpose by the Secretary of State. It will also make it an offence to supply commercially, or to offer to supply commercially, a video recording in breach of the conditions attached to the classification certificate, (e.g. to sell to a child a video classified as suitable only for those over the age of 18). These offences will apply, so far as necessary, to distributors and wholesalers as well as to retailers. There will be certain exemptions designed to prevent the need for censorship of video recordings which are not

/for ...

E.R.

for supply to the public (including unfinished products sold by one manufacturer to another, and material for broadcast), or which are concerned with certain specified matters including education, information, or instruction, or sport, religion or music (provided they contain no material of a sexual or grossly violent nature).

Government assistance for the Bill

10. The Home Secretary has announced that he very much welcomes Mr Bright's initiative and that the Government will be making available to him all the support and assistance he needs to speed the passage of his Bill through Parliament.

Mrs Whitehouse's criticisms of the Bill

11. Mrs Whitehouse expressed her dissatisfaction with these proposals at her meeting with the Home Secretary on 25 July. A copy of a paper by the National Viewers' and Listeners' Association is at Annex D. In Mrs Whitehouse's view the fundamental defect of Mr Bright's proposals is that they depend solely on video cassettes being subject to classification by a body designated by the Secretary of State. This opposition takes two strands: first, Mrs Whitehouse believes that the legislation should be based on a formula prohibiting the sale or rental etc of violent and sexual perversion, the depiction of which would be illegal; second, she is critical of the British Board of Film Censors which, as she is aware, is the body the Home Secretary expects to designate as the censorship body under the Bill.

General formula

12. In support of the "formula" approach, Mrs Whitehouse has cited two examples of foreign legislation. The first of these originated in Sweden in 1981 and makes illegal the sale, rental and distribution of "violent videograms containing detailed and realistic portrayals of violence or threats of violence to human beings or animals, indiscreet and prolonged portrayals of brutal or sadistic violence". The second model comes from legislation created in certain States in the USA. This forbids the distribution, by any means, of obscene matter and goes on to define precisely what is to be classed as obscene. Obscene matter is described as material without serious artistic, literary, political or scientific value which depicts in a "patently offensive way" specific acts ranging from simulated or actual sexual intercourse to specific acts of sexual perversion such as flagellation and bestiality. Mrs Whitehouse believes that a list of prohibitions along these lines would catch most offensive material and if it did not the list could simply be supplemented. (This approach would

E.R.

presumably be that proposed in connection with her "list" approach mentioned in paragraph 1 above).

13. The main difficulty with the NVLA proposals is that they rely heavily on subjective judgements about what constitutes material of artistic or similar value or what is or is not "patently offensive". Another objection is that the breadth and vagueness both of the general formula and the list approach would catch a great deal of material which most people nowadays regard as acceptable. It is possible, for example, to envisage "Macbeth" or "King Lear" being caught by the Swedish formula and, under the list approach, endless room for argument over whether films dealing "explicitly" with sexual themes were or were not of "serious" artistic value. A further problem is that pornographers would be able quite legitimately to exploit any area inadvertently omitted from the list; and given the large profits to be made, a great deal of ingenuity would no doubt be brought to bear to seek out such loopholes. The Government would then be faced with the problem of adding to or amending the original list.

14. It seems highly likely, therefore, that these approaches, in the context of the general obscenity law, would cause as many problems as they sought to solve. As to Mr Bright's Bill, the inclusion of Mrs Whitehouse's proposals would be bound to arouse intense debate about what activities should or should not feature in a list, as well as over similar issues of principle; this could seriously prejudice the prospects of success of the Bill.

Role of the British Board of Film Censors

15. Mrs Whitehouse has been extremely critical of the British Board of Film Censors (BBFC) which, in her view, has presided over a decline in moral standards, as demonstrated, for example, by the recent introduction of the "Restricted(18)" ("18R") certificate given to films intended for exhibition in club conditions only to those over the age of 18.

16. The Home Secretary pointed out to Mrs Whitehouse at their meeting on 25 July that the BBFC were the obvious body to designate as the censorship body since they had the necessary experience and resources. Despite Mrs Whitehouse's misgivings, they were in fact generally regarded as having performed their duties satisfactorily.

/17.

17. The Home Secretary would not designate the BBFC unless he believed that they would undertake the classification of video recordings in a responsible manner, but he would be fully prepared to withdraw the designation and make fresh arrangements if it became plain that the standards they set were not publicly acceptable.

Guidelines for the designated body

18. Mrs Whitehouse believes that if her proposed general formula is not to be included in Mr Bright's Bill the designated body should at least be issued with clear guidelines for the purpose of carrying out its censorship duties. These "guidelines" should take the form of the general formula mentioned in paragraphs 12-14 above, indicating what type of material should be excluded from classification and which it would therefore be illegal to supply.

19. The Home Secretary firmly believes however that the Government should not become involved in censorship decisions, either in individual cases or by setting specific guidelines. The issue of guidelines to the BBFC would bring Ministers much more to the forefront of the exercise and make it much more difficult to leave the responsibility for individual decisions to the designated body. Moreover, the drawing up of such guidelines would pose all the problems referred to in paragraph 13 above in connection with the list system. The issue of guidelines by the Home Secretary would represent a significant step towards Government censorship and as such would be vigorously and widely opposed.

20. The intended position is that the Home Secretary will designate a body independent of Government to carry out the task of classifying video cassettes and will remain aloof from its day to day operations. If the body performed its task in a manner which caused obvious and widespread public concern, the ultimate sanction would be removal of designation. That is a very different matter, however, from the day to day monitoring of the body's operations.

21. A further safeguard is that the Bill will not provide the BBFC (or indeed dealers in video recordings) with immunity from prosecutions under the Obscene Publications Acts 1959 in respect of video recordings they have classified.

/....

"Restricted(18)" Certificates

22. The "Restricted(18)" ("18R") classification was introduced by the BBFC in December 1982 to supplement the four public categories of film classifications. It is applied to films which in the view of the BBFC should be shown only under club conditions to people over the age of 18. This covers films which, while not portraying extremes of sexual perversion or horror or violence, are likely to be more explicit than films previously given an "X" certificate.

23. Mrs Whitehouse explained at her meeting with the Home Secretary that she is particularly anxious that "18R" material should not be available on video because of her concern that, whatever the restraints, children would gain access to it.

24. Ministers have given sympathetic consideration to this request. However according to informal soundings by Mr Bright, this would attract some Parliamentary opposition. Moreover, our legal advice is that the absolute prohibition of the sale of video recordings which would otherwise fall within the "18R" category might constitute a breach of our international obligations on freedom of expression.

25. Ministers' present view, therefore, is that the Bill should not prevent absolutely the supply of restricted 18 video recordings, but that their supply should be confined to sex shops to which people under 18 are not admitted. This, together with the other provisions of the Bill, will ensure the removal from High Street shops of the most objectionable material and make it much less likely that it would get into the hands of children. Even if the Bill were drawn up as Mrs Whitehouse suggests, however, it would not be possible to offer absolute safeguards against irresponsible parents allowing children to watch unsuitable material.

Home Secretary's meeting with Mrs Whitehouse on 25 July

26. At his meeting with Mrs Whitehouse, the Home Secretary made it clear that the Government fully shared her concern about the spread of objectionable video recordings. He outlined the proposed contents of Mr Bright's Bill and explained how this would considerably strengthen the law in this area. The Home Secretary pointed out that Private Members' legislation was subject to hazards and drew attention to the dangers to its safe passage through

/.....

E.R.

Parliament if Mrs Whitehouse and her supporters did not give it their support or if they tried to force through controversial amendments.

27. The Home Secretary undertook to consider all the points made by Mrs Whitehouse. He will convey his conclusions to Mrs Whitehouse when the Bill is published (which is expected to be early in November).

BROADCASTING

28. Mrs Whitehouse has expressed concern about the level of violence and bad language in programmes, particularly those shown when large numbers of children and young people will be watching.

29. The BBC, the IBA and the Welsh Fourth Channel Authority are independent of Government and are responsible for the content of their programmes, within the general rules prescribed by licence and agreement for the BBC and under statute for the IBA and Welsh Fourth Channel Authority. Their obligations (e.g. not offending against good taste or decency or being offensive to public feeling) are much more stringent than the normal requirements of the criminal law, in particular the Obscene Publications Acts from which the broadcasters are exempt.

CABLE

30. Mrs Whitehouse opposes the suggestion made by the Hunt Inquiry that any "X" film might be shown on cable television and at any time of the day provided the particular channel is equipped with an electronic lock to protect children.

31. The White Paper on the development of cable systems and services, published in April, states that cable operators should have the same duties in matters such as taste and decency as those which now apply to the BBC and IBA, with no special exemption for electronically lockable channels. Like the BBC and IBA, the new Authority will be required to have particular regard to programmes shown when large numbers of young people are likely to be watching. The White Paper also makes it clear that so-called "adult channels" have no place on the sort of cable systems which the Government wishes to see develop. It is proposed that cable channels will be subject to the Obscene Publications Acts 1959 and 1964.

32. The Cable Bill is due for introduction in the House of Lords before Christmas.