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From the Private Secretary

19 September 1984

Time Limits in Criminal Proceedings

The Prime Minister has seen a copy of the Home Secretary's letter of 17 September to the Lord President, with which he circulated a paper on time limits in criminal proceedings.

The Prime Minister is content with the Home Secretary's proposals, subject to the views of H Committee colleagues. She also agrees that, if his proposals are approved by the Committee, they should be referred to at the Party Conference.

I am copying this letter to the Private Secretaries to members of H Committee, to Henry Steel (Law Officers' Department) and Richard Hatfield (Cabinet Office).

(David Barclay)

Hugh Taylor, Esq.,
 Home Office.

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Prime Minister⁽⁴⁾

Any doubts about this are likely to revolve around courts' ability to cope, given the pressure on them in some areas. But a worthwhile reform in principle.

QUEEN ANNE'S GATE LONDON SW1H 9AT

17 September 1984

Content, subject to colleagues?
D. Winnie,

TIME LIMITS IN CRIMINAL PROCEEDINGS

DWB
17/9

Yes
me

.... As you will recall from our exchanges over the Government's reply to the Home Affairs Committee's report on remands in custody, I have been considering whether there might be a case for introducing statutory limits, as already exist in Scotland, on the period before trial in the criminal courts in England and Wales. I enclose a copy of a paper on the subject which I would have circulated to colleagues in the normal way had it been possible to arrange an early meeting of H Committee.

As the paper explains, I have recently come to the view that, although the Scottish system cannot simply be replicated south of the border, time limits could make a useful contribution to reducing excessive delay in bringing cases to trial where the accused is in custody, and would be consistent with our general policy on efficiency in the public service. I should therefore like to move firmly in that direction and to announce our commitment in principle to do so at the Party Conference, in the context of a general statement about the efficiency of the criminal justice system. I have had a discussion about this with Quintin Hailsham and intend to talk to Michael Havers about the matter when he returns from his holiday next week. Quintin retains some of the doubts expressed in his letter to you about the reply to the Select Committee, but I understand he would be ready to go along with my proposals if they command the support of other colleagues.

I should be grateful for colleagues' agreement that I should announce at the Party Conference that the Government is committed in principle to introducing statutory time limits. There would, of course, be no need to announce the full details at the Conference, and any outstanding points affecting implementation could be dealt with either in further correspondence or at a future meeting of H.

I do feel, however, particularly in the light of the concern currently being expressed about crimes committed in the context of the miners' strike, that it is important to take an initiative of this kind at the Conference.

I am copying this letter, with the paper, to the Prime Minister, to other members of "H", to the Attorney General and to Sir Robert Armstrong.

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TIME LIMITS IN CRIMINAL PROCEEDINGS

Memorandum by the Secretary of State for the Home Department

1. There has been growing concern in recent years about delays in bringing criminal cases to trial. The Lord Chancellor has achieved substantial improvements in the performance of the Crown Court, at a time of increasing business; and he and I have recently issued a circular of guidance to the magistrates' courts about ways in which they might tackle delay. But a minority of cases is subject to very serious delay, more than can be explained either by the need for adequate preparation on both sides or by the pressure on court capacity. This is particularly serious where the accused is in custody.
2. Some months ago, I therefore asked my officials to review the arguments for and against statutory time limits on the period before trial, as exist in Scotland. This review coincided with a study by the Home Affairs Committee of remands in custody, whose report included a recommendation that the Government should commit itself in principle to introducing statutory time limits, and should mount a series of experiments on what kind of time limits would be feasible. In the reply to the Committee's report, we described the work in hand, and indicated that we aimed to announce a decision on time limits early in the next session.

The nature and causes of delay

3. For cases tried on indictment, the average time between first court appearance and committal for trial, where the accused was in custody, was 37 days in both 1981 and 1982. (It had been as low as 27 days in 1977). But 15% (equivalent to about 1500 cases) had not been committed after 56 days. For the period between committal and trial in the Crown Court, waiting times are longer - 59 days on average in 1981, but with 13% (1700 cases) still awaiting trial after 110 days. This means that it is not unusual for the

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total time spent awaiting trial in custody to be as much as six months, and not unknown for it to be more than a year. The position is more serious in the London area, where the average time between committal and trial in custody cases was 116 days in 1983.

4. These long periods in custody awaiting trial are undesirable in principle. They are particularly damaging to confidence when, as happens in a minority of cases, the accused is acquitted. And, by boosting the remand population, they put further pressure on the prison system. They occur for a variety of reasons, not the least of which is the sheer volume of business. But I believe that the attitudes of the various participants in the process - prosecution, defence, courts staff, even witnesses - are also crucial. By contrast with Scotland, there is no single person in our system who has the responsibility for bringing cases to trial on time or the authority to do so. If there is an expectation about the time which cases will take, and attitudes which assume a certain amount of delay, then delay will occur. It is the scope they offer for toning up the system generally which attracted me to the idea of time limits.

Time limits in other countries

5. In the course of their study, my officials looked at the time limits which already operate in the United States and in Scotland. They differ greatly in nature and effectiveness. The American Federal Speedy Trial Act requires the federal courts to bring cases from arrest to trial within 100 days, 90 days if the offender is in custody. But there is a very wide range of circumstances in which the period can be extended, and many observers doubt if the Act has made much difference to the time taken to bring cases to trial.

6. The Scottish system, however, works extremely well. It has been in place for many years and all those associated with the criminal process work on the assumption that the time limits will be observed. Where the accused is in custody, the limits are 110 days in cases to be tried on indictment and 40 days in summary cases. These limits may be extended by a High Court judge, where he is satisfied that the delay is due to

- the illness of the accused or of a judge
- the absence or illness of a necessary witness
- any other sufficient cause not attributable to fault on the part of the prosecutor

If the limit is exceeded, the accused must be released from custody. Strictly speaking, the charges then fall, but it is open to the procurator fiscal to order release before the limit is reached, thus preserving the possibility of trial. (In practice this scarcely ever happens).

7. There are several important respects in which the Scottish system differs from that in England and Wales. The prosecution can insist on court sittings being held, if it is necessary to enable a case to be brought to trial before the time limit. This power is rarely exercised, but its existence conditions courts management very greatly. The prosecution also effectively determines whether cases should be tried on indictment or summarily; and the defence has more incentive to comply with the time limit, because (although taken into account) time spent on remand does not count automatically towards sentence.

Time limits in England and Wales

8. These are important differences. My plans for an independent prosecution service will establish a clearer and simpler framework for consideration of these matters. But I do not envisage the prosecutor having power to insist on court sittings or to determine method of trial; and changing the basis of sentence calculation to accord with the Scottish approach would be highly controversial. The consequence of our prosecutor having less control over the passage of cases through the system is that the range of causes of delay which could not be attributed to the prosecution (and hence form grounds for an extension of the limit) would be that much wider. A statutory time limit, unsupported by other measures, would therefore be a significantly less powerful instrument than the Scottish 110 day rule.

9. I therefore have in mind a more comprehensive approach. Much of our current effort, in the Lord Chancellor's Department and the Director of Public Prosecutions' office as well as in the Home Office, is directed towards improvements in efficiency and the setting of targets and guidelines for the services in the criminal justice system. The recent circular to magistrates' courts invites them to consider setting local guidelines. The Lord Chancellor's Department, in the context of the Financial Management Initiative, is instituting a system of objectives and targets for the Crown Court. Plans for the new prosecution service include the development of targets and measures of performance. It would fit naturally with all of these moves to have a system of administrative guidelines for the courts and the prosecution, setting out the normal maximum time to be taken over each stage of the process.

10. Such a combined approach - a statutory time limit on the Scottish model, biting essentially on the prosecution, but backed by administrative guidelines - would, I believe, have a good chance of success. It would give the courts a stake in the achievement of the time limits. Moreover^{if} the prosecution and the courts administration between them succeeded in listing a case for hearing in time, the defence would have to make any case for adjournment before a judge or before the magistrates, rather than simply telling the listing officer that they were not ready. Cases would not simply drift into excessive delay, as they sometimes do now.

11. As regards the statutory provision itself

- a) Its scope would be broadly as in Scotland. In particular, the consequence of exceeding the time limits where the delay was attributable to the prosecution would be the release of the accused. Without a sanction of this kind, it seems to me that we could not expect the time limit to operate as an effective discipline.
- b) There would be broadly the same range of grounds on which the court could grant an extension (see paragraph 6 above), notably in cases of illness, but embracing other sufficient reasons not attributable to the prosecutor.
- c) Time limits would apply to three distinct periods - the whole period between first court appearance and trial in summary cases, and the periods between first appearance and committal and committal and trial in cases tried on indictment. The study by my officials suggested tentatively that these three limits might be of the order of 40 days, 56 days and about 100 days respectively, but I would want to discuss the precise limits with interested parties and reappraise them in the light of the field trials which I propose in paragraph 13 below. There is an existing requirement in the Crown Court Rules that trials in the Crown Court should begin not later than 56 days after committal, but this period is unrealistically short and is routinely extended. It would need attention if the changes I am proposing are accepted.

12. Doubts have been expressed about the feasibility of statutory time limits while the courts are under as much pressure as they are in some parts of England and Wales. A time limit would not in itself create courts capacity. I understand these doubts. But I see the argument as essentially about priorities in using existing resources. We already afford a degree of priority to cases where the accused is in custody, and cases which have already been delayed. Time limits would sharpen that priority and make it more habitual. There might be some lengthening of waiting times in cases where the accused is on bail and in custody cases which would otherwise have been disposed of more quickly, but I believe that this would be a price worth paying. Bail cases are very much more numerous than custody cases. My officials ~~estimate~~ ^{calculate} that even in the Crown Court the average increase in waiting times to enable the achievement of realistic time limits in custody cases would probably be less than a week.

Field trials

13. Nevertheless, I accept that there is sufficient uncertainty about the effect of my proposals for it to be right to proceed cautiously. I therefore propose that we should mount trials in a few areas. This would accord with the Home Affairs Committee's recommendation for experiments. The purpose of the trials would be to test the feasibility and effectiveness of the approach outlined above, the realism of the time limits adopted, the effect on bail cases, and the implications in areas, especially London, where the courts are particularly hard-pressed.

14. Such trials would need the co-operation of all those involved. To yield their full benefit, they would also require as realistic an atmosphere as possible, and for that reason I propose to include provision for time limits in future legislation, if possible in the Prosecution of Offences Bill. The provision would cover the basic elements of the scheme, but would leave its implementation (including the specification of the actual time limits) to subordinate legislation, with scope for implementation by geographical area.

Financial and manpower implications

15. As is noted above, what I envisage is a readjustment of priorities within existing resources. On certain assumptions, there might be some relief to the prisons (a small overall reduction in the prison population and some easement of the burden of escort duties for remand prisoners) and the magistrates' courts (fewer routine remands), but it is difficult to translate these into quantifiable savings. The cost of the field trials would probably be of the order of £100,000.

Conclusions

16. The comprehensive approach which I have outlined above accords with our general thinking on efficiency and effectiveness in the public services. At one level, it constitutes quite a narrow re-ordering of priorities within the criminal justice system. But I am optimistic that it might have the general effect of toning up the system and increasing awareness of court delay (which has been in our minds in recent weeks in the specific context of the miners' strike) as a general issue. I should like to announce at our Party Conference next month that the Government is committed in principle to time limits and perhaps to outline how we see the way forward.

17. I therefore invite colleagues' agreement

- a) that we should move towards a system of statutory time limits in criminal proceedings, designed to prevent excessive delay where the accused is in custody, directed primarily at the prosecution but backed by administrative guidelines for the courts;
- b) that we should proceed by mounting several field trials to test the feasibility and effectiveness of the scheme;
- c) that these trials should take place in as realistic an atmosphere as possible and that we should therefore include a provision in legislation containing the main elements of the scheme and enabling time limits to be brought into force selectively by order;
- d) that I should announce the Government's commitment in principle to time limits when I address the Conservative Party Conference next month.

LB

Home Office

September 1984

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