

CONFIDENTIAL



copy to see,

70 WHITEHALL, LONDON SW1A 2AS

01-233 8319

From the Secretary of the Cabinet and Head of the Home Civil Service

Sir Robert Armstrong GCB CVO

Ref. A086/299

29 January 1986

Dear Henry,

I understand that the Solicitor General has been invited to give evidence to the Defence Select Committee on 4 February, and you have asked for advice as to whether the Solicitor General should accept the invitation.

It is evident that the Defence Select Committee would like to inquire into the circumstances surrounding the disclosure of the Solicitor General's letter on 6 January to the then Secretary of State for Defence, about which the Prime Minister has, of course, fully informed the House of Commons in her statement on 23 January and her speech on 27 January. The Select Committee have summoned by name the officials in the Department of Trade and Industry and the Prime Minister's Office known to be concerned with this affair.

As to the officials concerned, the Prime Minister has taken the view that they should not accept the summons to give evidence to the Select Committee. Other Department of Trade and Industry officials have been summoned to give evidence on wider aspects of the Westland affair; they will be instructed that, if the Select Committee seek to question them about the circumstances surrounding the disclosure of the Solicitor General's letter, they should say that they can add nothing to the full account of the matter which the Prime Minister has given to the House of Commons.

No doubt the invitation to the Solicitor General has been sent in the same connection.

/It was

Henry Steel Esq CMG OBE

CONFIDENTIAL

CONFIDENTIAL

It was agreed at the time of their establishment that no Select Committee would be empowered to monitor the Law Officers' Department on the grounds that the Law Officers are not regarded as answerable to Parliament for their legal advice to the Government in the way that Departmental Ministers are answerable to Parliament. The memorandum of guidance for officials appearing before Select Committees makes it clear that officials should not disclose, give evidence about or discuss advice given by a Law Officer, and that such advice is disclosed only when Law Officers themselves expressly authorise it or themselves report to or advise Parliament or a Parliamentary Committee.

In the case in question, the Solicitor General was giving advice to the then Secretary of State for Defence. It was advice on a legal matter, and I do not think that he can be regarded as answerable to Parliament in respect of it. The legal advice given to the client is in confidence and it is for the client to take action on that advice, and to be answerable for any action thus taken.

My own view would therefore be that the Solicitor General should decline the invitation to give evidence to the Defence Select Committee on 4 February.

An alternative course might be for the Solicitor General to write to the Chairman of the Defence Select Committee asking him to detail the points on which the Committee wished to seek evidence from him. He could then consider in the light of the reply to that letter whether his appearance would be justified or whether to send in written evidence on the points raised and stand on that. But I suspect that the eventual outcome of that course would have to be the same; that the Solicitor General would decline to attend to give oral evidence to the Select Committee.

I am sending copies of this letter to the Private Secretaries to the Prime Minister, the Lord Privy Seal, the Secretary of State for Defence, the Secretary of State for Trade and Industry and the Chief Whip.

Yours ever
Robert Armstrong

CONFIDENTIAL

30.1
AM86