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MR WICKS

cc M r Stark.

Westland: Prime Minister's Statements about the disclosure of the Solicitor General's letter of 6 January and the Enquiry into that disclosure.

As you requested, I attach a note listing what seemed to me to be the main questions relating to the disclosure of the Solicitor General's letter and the subsequent enquiry, and the statements the Prime Minister made on each point in her statement of 23 January and speech of 27 January. My comments are throughout in square brackets.

2. I also attach a note prepared by the Law Officers' Department commenting on the main issues from their standpoint, by reference to the Prime Minister's statements and the answers given by them to Parliamentary Questions.

JW

A J WIGGINS
Economic Secretariat
Cabinet Office.
4 February, 1986

Attachments:

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Discrepancies between Prime Minister's letter of 1 January and Mr Heseltine's letter of 3 January.

" On Friday 3 January, there was an exchange of letters between Mr Horne of Lloyds Merchant Bank, representing the European Consortium, and My Right Hon. Friend the then Secretary of State for Defence. In his letter, Mr Horne asked for amplification of a statement in my letter to Sir John Cuckney. As the House knows, my Right Hon. Friend went into considerable detail in his reply. His letter had not been discussed with my Office before it was sent, even though it dealt with points arising from my letter to Sir John Cuckney.

On the following day, Saturday 4 January, I saw copies of the exchange of letters. In view of the very careful steps that I had taken to clear my letter to Sir John Cuckney with the Departments concerned and with the Solicitor General, I made enquiries to find out whether the Defence Secretary's letter had been cleared in the same way with the Department of Trade and Industry and with the Law Officers. It had not. In view of the continuing need for accuracy and consistency in Government statements on this subject, I asked that a message be sent to my Right Hon. and Learned Friend the then Secretary of State for Trade and Industry, as the sponsoring Minister for Westland, to suggest that he should ask the Solicitor General to consider the Defence Secretary's letter and give his opinion on whether it was accurate, and consistent with my own letter to Sir John Cuckney."

(27 January, 1986, OR Col 652).

[I understand that Westland approached officials at the Department of Trade and Industry on Friday 3 January questioning the consistency of the two letters; the Defence Secretary's letter carried the implication that all the European governments and companies concerned had indicated that Westland's future



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participation in European collaborative projects would be in doubt if the Sikorsky deal went through, whereas the Prime Minister's letter had indicated only that some of the European governments and companies had given such indications. Since Mr Heseltine was effectively in control of exchanges with the European defence Ministers and the European companies, DTI officials doubted whether the matter could effectively be taken much further. I understand that Mr Brittan shared this view.]

When and how were approaches made to the Solicitor General?

"I asked that a message be sent to my Right Hon. and Learned Friend the then Secretary of State for Trade and Industry ... to suggest that he should ask the Solicitor General to consider the Defence Secretary's letter and give his opinion on whether it was accurate, and consistent with my own letter to Sir John Cuckney."

(27 January, OR Col. 652).

"The Westland Directors noticed that the terms of (Mr Heseltine's) letter were in certain respects different from the terms used in the Prime Minister's letter and raised the matter with the DTI as the sponsoring Department, and there has been no doubt about that. I, in turn, consulted the Law Officer, as I said in an intervention earlier in the Debate, who had not been sent a copy of my Right Hon. Friend's letter of 3 January. The Law Officer subsequently wrote the letter which has been the subject of controversy. I did not see it before it was written and I did not ask him in any way to write the letter to my Right Hon. Friend the then Secretary of State."

(Mr Brittan 15 January 1986, OR Col 1167-8).

"The Solicitor General, on the basis of the evidence available to him, formed the provisional opinion that the Defence Secretary's letter contained material inaccuracies which needed to be corrected. The view was reported to me. The matter could clearly not



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be left there. I therefore, through my Office, asked him to consider writing to the Defence Secretary to draw that opinion to his attention. I learned subsequently from the Solicitor General that he spoke to the then Defence Secretary on the telephone that same evening [4 January] and told him his provisional opinion about the letter and warned him that he would probably write to him on Monday 6 January, when he had checked the documents, and advise him to correct the inaccuracies. The Solicitor General further considered the documents on the morning of Monday 6 January. They confirmed him in his opinion. He therefore wrote to the Defence Secretary, advising him to write again to Mr Horne correcting the inaccuracies. "

(Prime Minister 27 January, 1986, OR Col 652).

What did the Prime Minister intend should happen after the Solicitor General had written to Mr Heseltine?

[No comment has been made about this in precise terms.]

"As I have already indicated, it was especially important in this situation for statements made on behalf of the Government, on which commercial judgments might be based, to be accurate and in no way misleading. That being so, it was a matter of duty that it should be made known publicly that there were thought to be material inaccuracies which needed to be corrected in the letter of my Right Hon. Friend the Member for Henley of 3 January, which, as the House will recall, had already been made public. Moreover it was urgent that it should become public knowledge before 4pm that afternoon, 6 January, when Sir John Cuckney was due to hold a press conference to announce the Westland Board's recommendation to shareholders of a revised proposal from the United Technologies Corporation - Fiat Consortium. These considerations were very much in the mind of my Right Hon. and Learned Friend the Secretary of State for Trade and Industry when the copy of the Solicitor General's letter was brought to his attention at about 1.30pm that afternoon of 6 January. He took the view that the fact that the



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fact that the Solicitor General had written to the then Secretary of State for Defence, and the opinion he had expressed, should be brought into the public domain as soon as possible. He asked his officials to discuss with my Office whether the disclosures should be made and, if so, whether it should be made from 10 Downing Street, as he said he would prefer. He made it clear that, subject to the agreement of my Office, he was giving authority for the disclosure to be made from the Department of Trade and Industry, if it was not made from 10 Downing Street. He expressed no view as to the form in which the disclosure should be made, though it was clear to all concerned that in the circumstances it was not possible to proceed by way of an agreed statement."

(23 January 1986, OR Cols 449-450).

Consultations leading to the disclosure of the Solicitor General's letter.

"My Office were accordingly approached. They did not seek my agreement: they considered - and they were right - that I should agreed with my Right Hon. Friend the Secretary of State for Trade and Industry that the fact that the then Defence Secretary's letter of 3 January was thought by the Solicitor General to contain material inaccuracies which needed to be corrected should become public knowledge as soon as possible, and before Sir John Cuckney's press conference. It was accepted that the Department of Trade and Industry should disclose that fact and that, in view of the urgency of the matter, the disclosure should be made by means of a telephone communication to the Press Association. Had I been consulted, I should have said that a different way must be found of making the relevant facts known."

(23 January, 1986, OR Col 450).

"It would have been much easier, as the facts were commercially sensitive, if the relevant letters had been cleared as mine was with the Solicitor General. It was vital to have accurate information in the public domain because we knew that



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judgments might be founded upon that and that the Government could be liable if wrong judgments were made as a result of misleading information. It was to get that accurate information to the public domain that I gave my consent."

(Prime Minister in answer to Mr Cranley, Onslow, 23 January 1986, OR Col 455). [The last four words are a problem]

"I explained to the House on 23 January how extracts from the Solicitor General's letter were disclosed to the media of 6 January. I repeat that I deeply regret that this was done without reference to the Solicitor General. Indeed, with hindsight, it is clear that this was one, and doubtless there were others, of a number of matters that could have been handled better, and that too, I regret."

(27 January 1986, OR Col 653).

Why was the disclosure selective (as the Solicitor General complained particularly in his letter of 7 January)?


[No comment has been made on this point.]

Involvement of No 10 Staff.

"My officials made it clear to the enquiry that they did not seek my agreement. They told the enquiry they did not believe they were being asked to give my authority, and they did not do so. Officials in the Department of Trade and Industry told the enquiry that they regarded the purpose of their approach to my officials as being to seek agreement for the disclosure as well as to the method. They believed that they had the agreement of my Office, and acted in good faith, in the knowledge that they had authority from their Secretary of State and cover from my Office."

(27 January 1986, OR Col 655).

"I discussed the matter with my Office the following day, when I also learned of the Law Officers' concern. I was told that the Solicitor General's advice had not been disclosed by


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my Office. I was also told, in general terms, that there had been contacts between my Office and the Department of Trade and Industry. I did not know about the then Secretary of State for Trade and Industry's own role in the matter of the disclosure until the enquiry had reported. The difference of understanding between officials in my Office and those in the Department of Trade and Industry only emerged after the enquiry had started."
(27 January 1986, OR Col 657).

Why was the Solicitor General not consulted about the disclosure of his letter of 6 January?

[The Prime Minister has indicated her regret that the manner of the disclosure and that the fact that the Solicitor General was not consulted. She has not commented directly on this point. It is doubtful whether, given the perceived need for haste, those concerned gave any particular consideration to the specially privileged nature of advice given by the Law Officers. It seems unlikely that the Solicitor General would have agreed to the disclosure of his letter either in whole or in part.]

Why was an Enquiry established?

"On Tuesday 7 January, the day after the Solicitor General's letter was disclosed, my Right Hon. and Learned Friend the Attorney General sought the view of the Head of the Civil Service as to whether it would be appropriate for the Law Officers to seek a formal Enquiry. After discussions between the Attorney General and Head of the Civil Service, my Right Hon. and Learned Friend made clear his view that there should be an enquiry. The Head of the Civil Service minuted me formally on Friday 10 January seeking my authority for the institution of such an enquiry. I readily gave him that authority. In fairness to everyone it was essential to have a full and objective report on what had happened, and it was clearly desirable that all the officials concerned should be able to give their



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own full accounts of their part in what had occurred. My authority was conveyed to the Head of the Civil Service on Monday 13 January. The following day, I informed the House that an enquiry had been instituted. I had been asked by the Law Officers to institute such an enquiry. I was formally advised by the Head of the Civil Service to do so. I had no doubt that it was right to set up the enquiry. Indeed, on 7 January the Hon. Member for Swansea West (Mr Williams) an Opposition Front Bench spokesman wrote to me to ask that an enquiry should be set up so that - I quote:

'the full facts can be established'.

Even so some Hon. Members opposite have subsequently criticised the decision to hold an enquiry. If I had rejected the advice that I had received, if I had refused to hold an informal enquiry, the Parties opposite would have had just cause to criticise me. I had no doubt they would have done so. To be criticised when I agree to an Opposition request to hold an enquiry is, to say the least, an unusual experience. The enquiry reported to me on 22 January."

(27 January 1986, OR Col 653-4).

Knowledge by Law Officers of part played by Mr Brittan and No 10 officials.

[No knowledge until 22 January when summary of report of enquiry received by Attorney General, and report of enquiry received by Solicitor General. (Answers given by Law Officers to Mr Allan Williams and Mr Frank Dobson on 30 January).]

Remark "Digest" of Parliamentary
statements, Answers etc. insofar
as Law Officers' involvement is
concerned

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Mr Nigel Wicks

BACKGROUND

As for the particular Question asked by Jack Straw MP, you should be aware that the Solicitor General gave advice on the proposed support by the Government for the manufacture by Westland of 45 helicopters by guaranteeing or underwriting their sales. This was in connection, as I understand it, with an offer made by Bristow Rotorcraft plc to acquire the whole of the Ordinary share capital of Westland. I feel certain that you should not indicate that the Law Officers were consulted at that time. This would be a useful opportunity to re-state the convention, whilst regarding the disclosure of the advice given by the Solicitor on 6 and 7 January as exceptional cases. In the Answer I have mentioned the advice given by the Solicitor on 31 December. The fact that he did so is clear from the letter of 6 January and is also referred to in the Prime Minister's speech of 27 January.

It is not possible to predict all the further supplementaries that there may be on this Question or on the Question from David Winnick MP. In answer to any supplementaries, it would clearly be desirable to rely on what has already been said to the House. I will therefore attempt to list the facts (in chronological order) relating to the role of the Law Officers which have been made known to the House.

Prime Minister's letter of 1 January to Sir John Cuckney:

This was cleared with the Solicitor General (Prime Minister's speech 27 January, Col.652; advice (not published) also referred to in Solicitor General's letter of 6 January now made public). ✓

Mr Heseltines letter of 3 January: Not cleared with the Law Officers (Prime Minister's statement of 23 January and speech of 27 January). ✓

The Solicitor General first saw this letter when copy of it in The Times on 4 January was drawn to his attention by Mr Brittan (Answer to Member for Holborn and St Pancras 3 February). ✓

Circumstances surrounding Solicitor General's letter of 6 January: The Prime Minister on 4 January asked that a message be sent to the Secretary of State for Trade and Industry to suggest that he should ask the Solicitor General to consider the Defence Secretary's letter and give his opinion on whether it was accurate and

.../consistent

content with the Prime Minister's letter of 1 January (PM's speech of 27 January, Col.652). ✓

Mr Brittan contacted Solicitor General (Hansard 15 January at Col. ...). ✓

Solicitor General on basis of evidence available to him formed the provisional opinion that the Defence Secretary's letter contained material inaccuracies which needed to be corrected. This was reported to the Prime Minister. Through her office the Prime Minister asked the Solicitor General to consider writing to the Defence Secretary to draw that opinion to his attention (Prime Minister's speech 27 January Col.652). ✓

Solicitor General spoke to Defence Secretary on telephone ^{on 4 January} and told him his provisional opinion and warned him he would probably write on 6 January when he had checked the documents and advise him to correct the inaccuracy (Prime Minister's speech 27 January Col.652). ✓

Solicitor General ^{considered} further documents on morning of 6 January. Confirmed him in his opinion. Wrote to Defence Secretary advising him to write again to Mr Horne (Prime Minister's speech 27 January Col.652). ✓

Solicitor General's decision to write and content of the letter were not in any way determined by the communication from No.10 (Answer to Member for Walsall North, 30 January). *Decided by but not determined by.* ✓

Knowledge of Leak: Solicitor General first learned of the disclosure at about 3 p.m. on 6 January as a result of LOD being asked to comment on it by representatives of the media shortly before that time (Answer to Member for Middlesborough, 27 January). ✓

Attorney General first learned of disclosure when he heard reports on radio at about 5 p.m. on 6 January (Answer to Member for Walsall North 27 January) ✓

Institution of Inquiry: On 7 January, the day after the disclosure, the Attorney General sought the view of the head of the Civil Service as to whether it would be appropriate for the Law Officers to seek a formal Inquiry (Prime Minister's speech 27 January, Col.653). ✓

Discussions took place between Attorney General and head of Civil Service. Attorney General made clear that there should be an Inquiry (Col.653). Cabinet Secretary minuted Prime Minister on Friday 10 January seeking authority for an Inquiry. Inquiry announced on 13 January (Col.653). Attorney General had not recommended any alternatives to a formal Inquiry (Answer to Member for Swansea West 30 January). Attorney General had no communication with Prime Minister (Answer to Member for Swansea West 30 January). Prime Minister's office informed of Attorney General seeking views of head of Civil Service (Answer to Member for Linlithgow 31 January).

Officials had not asked AG whether there was some way in which "all this" could be swept under the carpet. (SG's intervention in speech of
Publication of Solicitor General's letter of 6 January: This was placed in the *Mr. Mervyn Rees, 27 Jan.*
Library by the Lord Privy Seal on 15 January (Col.379). De-classification authorised by Law Officers (Prime Minister's Answer to Member for Leeds West of 3 February). *This was following Mr. Dabryll's point of order 15 January and strong indication through usual channels that debate would be impeded without publication of full letter.*

Knowledge by Law Officers of part played by Mr Brittan and No.10 Officials:

No knowledge until 22 January when summary of Report[?] of Inquiry received by Attorney General and Report of Inquiry received by Solicitor General. (Answers to Member for Swansea West 30 January and Answer to Member for Holborn and St.Pancras 30 January).

Immunity; In order that there should be no impediment to cooperation in the Inquiry the Attorney General authorised the head of the Civil Service to tell one of the officials concerned whose testimony would be vital to the Inquiry that he had the Attorney General's authority to say that, provided that he received full cooperation in his Inquiry, the official concerned would not be prosecuted in respect of anything said during the course of the Inquiry. Attorney General satisfied that that in no way interfered with the course of justice; on the facts as disclosed in the Inquiry there would have been no question of proceeding against the the official concerned (Prime Minister's statement of 23 January Col. 450 to 451).

Decision to grant immunity was Attorney General's, person concerned was uniquely able to give first-hand account of how disclosure was made (Answer to Member for Middlesborough 27 January).

.../Before

Before the head of the Civil Service was authorised, Attorney General satisfied himself on basis of what head of Civil Service was already able to report to Attorney General that the official was unwilling, unless given such an assurance, to provide the full and frank account of the facts which was essential if the Inquiry was to be successful. He was also satisfied that there was in any event no possibility that proceedings would be instituted against her in respect of the part she played in this matter (Answer to Member for Middlesborough 27 January). ✓

The policy in relation to the granting of immunity is to authorise an assurance being given to a witness that he will himself not be prosecuted only if Attorney General is satisfied that it is unlikely that he will otherwise be willing to give a full and truthful account of what he knows and that it is necessary, if the true facts are to be established or, as the case may be, if evidence is to be obtained which may permit proceedings to be instituted against others, that he should give that account. Such an assurance is always conditional upon his telling the truth, it is often a relevant consideration that there is no prospect of criminal proceedings being instituted against him, whatever his own anxieties on the matter, or that there is no evidence against him upon which such proceedings could be founded other than what he himself may say. (Answer to Member for Middlesborough 27 January). ✓

Attorney General was satisfied by what the head of the Civil Service was able to tell him that Ms Bowe had acted in complete good faith (Answer to Member for Linlithgow 3 February). ✓

Prosecution of Individuals: Attorney General, having considered the Report by the head of the Civil Service and on the material before him, decided after consultation with and with the full agreement of the DPP and Senior Treasury Counsel that there was no justification for the institution of proceedings under the Official Secrets Act 1911 in respect of any of the persons concerned in this matter (Prime Minister's statement 23 January, Col. 451). ✓

Both DPP and Senior Treasury Counsel were consulted on 23 January. Their role was to advise Attorney General on whether facts of this case justified institution of criminal proceedings against any person under Section 2 of the Official Secrets

Act. Consultation with them was in accordance with the usual practice in matters of this kind (Answer to Member for Middlesborough 27 January). .

✓

Publication of Solicitor General's letter of 7 January: Placed in Library on
27 January. (Prime Minister's speech of 27 January). *Same considerations as on 15 Jan re first letter.*

✓

Date in letter when documents referred to in letter supplied to Solicitor General should be 31 December, not 3 January. The documents will not be disclosed (Answer to Member for Workington 3 February).

✓