



01-405 7641 Extn

ROYAL COURTS OF JUSTICE  
LONDON, WC2A 2LL

7th November 1979.

The Rt. Hon. Francis Pym, M.P.  
Secretary of State for Defence.

*Dear Francis.*

*N.B.P.M.  
RV  
EX*

Farrell v. M.O.D.

We completed the hearing of this Appeal in the House of Lords yesterday morning and have succeeded on a narrow point, that is, that the Court of Appeal of Northern Ireland should not have ordered a retrial on the grounds that issues which were not pleaded should be tried.

I think this arose because the courts in Northern Ireland and the Bar are very sloppy about their pleadings and are not, apparently bound by the strict rules which apply in England. Although we have won we have not managed to persuade the House of Lords to rule upon the very difficult and important point whether the M.O.D. can be liable for the negligent planning and preparation of an anti-terrorist operation.

This issue may well be raised in some future case. If it is, the House of Lords has made it clear that we should take an objection, at the stage where the allegations are made in the pleadings, as a preliminary point, so that it can be decided. This means that we may have to go through the whole thing again - possibly on facts less helpful to us than those in the Farrell case. But try as I might, I could not persuade their Lordships to look at the wider issues. Accordingly, this is a somewhat limited victory, but in no way damaging to us.

When I get the judgments, I will write again if I feel that they have implications for the security forces which should be considered.

*Yours truly,  
Michael.*

8 NOV 1969

