



LAW OFFICERS' DEPARTMENT
ROYAL COURTS OF JUSTICE
LONDON, WC2A 2LL

H. Steel CMG OBE

20 April 1983

C Priestley Esq
Head of the Rayner Unit
Management and Personnel Office
Whitehall
LONDON S W 1

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Dear Priestley,

CENTRALLY CO-ORDINATED EFFICIENCY EXERCISES 1983 : THE
SCRUTINY PROGRAMME

I took over from Jim Nursaw at the beginning of March as Legal Secretary here and your letter to him of 15 March has therefore come to me. I am sorry that I have not been able to reply to it before now. I wanted to familiarise myself with the problem and also, in the light of what is said in paragraph 2 of your letter, to discuss it with the Attorney General. This I have now done and the present letter is written with his approval.

will request if required

I start by saying that the Attorney General accepts entirely that the fact that our activities are "demand orientated" is not by itself a sufficient reason why they should be immune from a Rayner-type scrutiny. It is perhaps a little unfortunate - in the sense of giving a misleading impression of the point that he was seeking to make - that Jim Nursaw put so much emphasis on that fact. But when it is coupled with other features of our rather peculiar set-up, I venture to suggest that there is indeed a strong case for saying that we are not a very suitable candidate for a scrutiny exercise.

It may help if, in explaining those other features, I describe briefly the way this Department is structured and staffed, what its major functions are and how we try to discharge them as efficiently as we can.

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First, structure and staffing. The Department comprises only the two Law Officers themselves, 10 professional officers (though we currently have only 9 in post) and what I think I can fairly describe as a minuscule supporting staff. This supporting staff consists of a secretarial component and a Registry component. The secretarial component comprises only 4SPSs (including one each for the Attorney General and the Solicitor General) and one PS, at present supplemented by 2 agency typists. The Registry component comprises only one EO, who also acts as the Attorney General's Parliamentary Clerk and looks after the general administrative business of the Department, 2 COs and one CA. We have no other staff of our own whatever. We are provided with accommodation in the Law Courts by the Lord Chancellor's Department and we have two messengers available to us from the messengerial staff of the Law Courts. In our Belfast Office - as you know, the Attorney General is also the Attorney General for Northern Ireland and the Department here has to serve him in that capacity as well - we have one CO and one audio-typist.

Next, the Department's functions. The Department exists solely to serve (or in certain respects to represent) the Law Officers. The duties of the Law Officers are those that are laid on them by law; by constitutional practice; and by the demands which their colleagues, Parliament, the Courts and members of the public are entitled to make of them. If asked for advice by a colleague or his Department, the Attorney General has to give it. If the Government is concerned in litigation that raises major issues of law or policy, the Attorney General has to be involved. If a crime is committed for which the Attorney General's consent is necessary before the offender can be prosecuted, he has to consider whether to give it. If a member of the public

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applies for the Attorney General's consent to a relator action or asks him to bring proceedings for contempt of court, he has to consider that, too. And so on. Nor does he, very often, have any discretion as to how quickly he responds: in the nature of things, his advice or intervention is usually needed in the framework of an externally imposed timetable. No doubt comparable considerations apply to some of the functions of some other Government Departments. But in our case they apply to virtually everything that we do. There is no function which we at present have that we can, as a matter of deliberate policy, choose not to exercise and no branch of our work we can voluntarily discard because it is not profitable or cost-effective.

Finally, how we carry out our functions. Here I would put my observations in the form of two general propositions. The first is that, leaving aside the Registry, there is virtually no element in our work which is routine or repetitive or which consists merely of the administration of legislation or the implementation of settled policy. Almost by definition (because of the capacity in which we are consulted), each matter that comes to us requires individual consideration and cannot properly be dealt with by any mechanical or routine procedure. This is true even of matters on which the Attorney General has identified certain general principles as governing his approach or has laid down certain guidelines for himself, eg the decision whether or not to prosecute in certain kinds of case or the granting of consent to an applicant for a relator action: he must apply his mind (and so must we for the purpose of serving him) to the particular facts and circumstances of each individual case and he would be acting improperly and perhaps even unlawfully if he did otherwise.

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My second proposition is that we do not operate, like ordinary Departments, on a hierarchical basis, with matters being processed for decision up a sort of chain of command until they reach the appropriate level at which responsibility can be taken. We have to operate - both because it corresponds to the nature of our work and because we have no spare capacity to do otherwise - as a collection of two-man teams, ie a Law Officer and one of the professional staff assisting and advising him. (Even that is often more theoretical than real. Because of the pressure under which we operate, each of our professional officers very often has to operate as a one-man team, ie to give advice in the name of the Law Officers but on his own authority, relying on his ability, because of the way we work, to "know the Attorney General's mind".) All this is not to say, of course, that we are complete individualists with no element of coordination or supervision in what we do. We regularly discuss our problems with each other - as all groups of professionals always will - and I myself and/or the Deputy Legal Secretary will often join in the handling of difficult or important cases, many of which must in any event be dealt with by more than one professional officer simply because of the range of the issues that have to be researched and analysed. In addition, I am responsible for the allocation of work to my colleagues and I try to be available as a sort of safety-net or point of recourse for them when they come under exceptional pressure or otherwise run into difficulty. The Attorney General is also likely to consult me on the advice he has been given by one of the professional staff if he is not happy about it. I am also responsible for the general efficiency of the Department and would expect to have to account to the Attorney General for anything that went seriously wrong. But, in general, we operate - and the Attorney General is very keen that we should do so - more

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like a set of barristers' chambers (albeit of a very special kind and with duties and responsibilities that a barrister in private practice does not have) than as an ordinary Government Department.

It is against this background that I think that Jim Nursaw suggested that scrutiny programmes of the kind to which Robin Butler's letter related would have little or no application to us. I have to say that I myself, starting from scratch in the light of your letter and genuinely without preconceptions, have come to the same conclusion and so also, I can say, has the Attorney General. But I would add two riders.

The first is that I am not asserting, and do not believe, that our working methods are incapable of ever being made more efficient, ie that they are, in the words of the most eminent legal authority, "the true embodiment of everything that's excellent. [They have] no kind of fault or flaw..." On the contrary, we are constantly on the lookout for ways of, for example, speeding up the processing within the Department of requests for advice, cutting out unnecessary repetition of research already performed or advice already given, coordinating our activities so as to avoid duplication of effort in cases on which more than one of us is engaged, and so on - all, of course, subject to the proviso that we are not justified in cutting corners if there is a risk (as there often is) of the public interest being seriously endangered or of a citizen's rights being disregarded. As one would expect, the most promising field for efficiency-seeking steps of this kind is our Registry and, generally, our internal administration. But with a minute Registry staff, such as I have described above, and with an Establishment Officer who functions as such single-

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handed in the interstices of his substantive duties as a full-time professional officer, the opportunity for major innovations is not very great. But we do try and we shall go on trying.

My second rider is that if, in the light of what I have said, you still think that we may have misappreciated the possibilities open to us in the scrutiny field, I should be very grateful for further guidance on where we might profitably turn our attention. If you thought it worthwhile, our Establishment Officer (David Haggan) and I would be very happy to pursue the matter in informal discussion with you or one of your colleagues.

In this letter I have confined myself to the position of the Law Officers' Department itself. It may be that the DPP's Department and the Treasury Solicitor's Department, both of whom are very much bigger than we are and do have certain routine functions, may have more to offer in the context of scrutiny programmes. Indeed, I know that the Treasury Solicitor has one, or possibly two, particular candidates in mind. I am therefore copying this letter and the previous correspondence to the Director and to the Treasury Solicitor, with the suggestion that they should themselves let you have their comments.

In view of paragraph 2 of your letter, I am also copying this letter to Robin Butler as well as to Mary Brown (Lord Privy Seal's Office).

*Yours sincerely,
Henry Steel*