



MINISTRY OF DEFENCE WHITEHALL LONDON SW1A 2HB

TELEPHONE 01-218 9000
DIRECT DIALLING 01-218 2111/3

MO 19/3/12

12th July 1984

Prime Minister
 Agree, subject to views of colleagues,
 to negotiate best deal possible
under £4,000 damages + £25,000 costs?
 Yes no C.D. P. 13/7

EUROPEAN COMMISSION ON HUMAN RIGHTS: FARRELL v UK

Since I wrote to you on 22nd February 1984 about this case, the President of the European Commission on Human Rights has chaired a meeting between the legal representatives of the Government and of Mrs Farrell. The outcome is that the latter have rejected our opening offer of £15,000 but have dropped their claim for £100,000 compensation (including an award of exemplary damages) and for an acknowledgement of a violation of the Convention, and have expressed willingness to settle for £40,000 plus costs. The latter are stated by Mrs Farrell's lawyers to be £25,000 in respect of expenses connected with the European Commission, and they also want us to protect Mrs Farrell against any claim on her award which might be made by the Legal Aid Fund. They are also ready to see the settlement described as a compassionate payment and as '£40,000 plus costs as agreed between the parties' so as not to inflate the apparent size of the overall figure. This offer has been noted by the UK negotiators, who have promised a response at a further meeting on 26th July.

We now need to decide what authority to give our negotiators, bearing in mind that we have already agreed to go to £25,000 if necessary, but have not addressed the question of costs. The figure of £40,000 is related to an optimistic view of the deceased's earning

The Rt Hon James Prior MP



potential and the detailed assessment now being made by our litigation experts of the figures provided by Mrs Farrell's lawyers could well give grounds for a significantly lower offer. It is usual to make a contribution to costs when settling Strasbourg proceedings, and the Commission has indicated that a payment in respect of costs would be appropriate in this case. The size of this contribution (subject of course to scrutiny of itemised accounts) would be a matter for legal negotiation.

I believe the best course, now that we are entering into a period of hard bargaining in which it would be impracticable for us to consult at every stage, would be to give our negotiators authority to strike the best bargain they can in terms of both compensation and costs below the revised claim, bearing in mind the need not to agree to terms which might be interpreted as a tacit admission of liability. I would hope that we might still find it possible not to go much above £25,000 for compensation, but I do not think it would be helpful to set hard and fast limits now that the extravagant claims for exemplary damages and admission of liability have been dropped. While we obviously wish to achieve a settlement on the most advantageous financial terms, we also need to remember that it would not be in our interests for negotiations to fail and for the case to proceed on the basis of an adverse finding by the Commission to the European Court, where a judgement against us would be likely to compel us to change our law on the use of force to prevent crime and effect arrest. It is important that the settlement should not lend itself to interpretation as an admission of a violation of the Convention, and I consider that the terms now on offer are satisfactory in this respect. We hope to be able to settle for less, but in my view even if we paid what Mrs Farrell's lawyers now ask for in full, it would be a cheap price to pay for averting what we must now expect to be a certain adverse finding by the Commission if the case were allowed to proceed.



I should be grateful to know if you agree. I am sending copies of this letter to the Prime Minister, the Attorney General, the Foreign and Commonwealth Secretary, the Home Secretary and to Sir Robert Armstrong.

Yours
w
Michael Heseltine

Michael Heseltine

File with CP 17.1



File
copy

10 DOWNING STREET

From the Private Secretary

16 July 1984

Dear Richard,

European Commission on Human Rights: Farrell v UK

The Prime Minister has considered the arguments in the Defence Secretary's letter of 12 July to the Northern Ireland Secretary. Subject to the views of colleagues, she agrees that our negotiators should be given authority to strike the best bargain they can in terms of both compensation and costs below the revised claim.

I am sending copies of this letter to Len Appleyard (Foreign and Commonwealth Office), Hugh Taylor (Home Office), Henry Steel (Law Officers' Department) and Richard Hatfield (Cabinet Office).

Yours sincerely,
Charles Powell

Richard Mottram Esq
Ministry of Defence.

Helaine

W. G. M. S.
Nov 79





MINISTRY OF DEFENCE WHITEHALL LONDON SW1A 2HB

TELEPHONE 01-218 9000
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MO 19/3/12

1st August 1984

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EUROPEAN COMMISSION FOR HUMAN RIGHTS: FARRELL V UK

Thank you for your reply of 25th July to my letter of the 12th.

I am glad to be able to let you know that a friendly settlement has now been reached in this case at £37,500 for compensation and £20,000 for costs. The scope for agreeing a level of compensation below this figure was virtually removed by statements made by the President of the European Commission during the course of negotiations that the Commission's preliminary view was that £40,000 would be reasonable; and that £37,500 was the minimum which he could recommend his fellow members of the Commission to endorse. The figure for costs was also arrived at following his proposal for a compromise, and an undertaking was given that there would be no claw-back by the Legal Aid Fund.

The Commission's report of the settlement will report that the death of the applicant's husband was an unfortunate mistake which would not have occurred had the soldiers not mistakenly believed that the husband was attempting a terrorist attack on the Provincial Bank. It will also say that the British Government is acting on compassionate grounds and that the settlement does not imply any

The Rt Hon James Prior MP

NSP 17
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admission of a violation of the Convention or any reproach against the soldiers. The amount of our contribution to legal costs will not appear in the report.

The settlement still has to receive the blessing of the Commission, which cannot take place until the beginning of October, but it is very likely that, with the President's recommendation, which he said he would give, the Commission will approve the settlement. I regard the outcome of the case as very satisfactory in view of the difficulties in which an adverse finding by the Commission would have placed us.

I am sending copies of this letter to the Prime Minister, the Foreign and Commonwealth Secretary, the Home Secretary, the Attorney General and to Sir Robert Armstrong.

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Michael Heseltine

Michael Heseltine

McCand: Farrell
Nov 79

3 AUG 1984



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NORTHERN IRELAND OFFICE
WHITEHALL
LONDON SW1A 2AZ

SECRETARY OF STATE
FOR
NORTHERN IRELAND

NRPM
COD 25/7.

The Rt Hon Michael Heseltine MP
Secretary of State for Defence
Main Building
WHITEHALL
LONDON SW1A 2HB

25 July 1984

Dear Michael

EUROPEAN COMMISSION OF HUMAN RIGHTS: FARRELL V UK

Thank you for your letter of 12 July.

For the reasons set out in your letter, and Michael Havers' of 16 July, I agree that we should allow our negotiators to settle for up to £40,000 plus reasonable costs. While we obviously wish to keep the settlement as low as possible - both for financial reasons, and because a high settlement would tend to imply an admission of liability - it would be very undesirable to let the chance of a friendly settlement elude us for the sake of an extra £15,000: the possible alternative of an adverse finding by the Commission, and possibly the need to change the law on the use of reasonable force, would be very unfortunate. A friendly settlement with no liability - especially since it seems to have the Commission's support - seems an attractive option.

I understand that during the course of the negotiations last month, the President of the Commission suggested that the report of the settlement should include a statement of the fact that the shooting of Mr McLaughlin was a mistake: if the security forces had not thought that he was a terrorist, they would not have shot him. It seems to me that such a statement might provide a useful protection and I hope our negotiators might be able to secure some statement on these lines as part of the settlement package.

I am copying this letter to those who received yours.

Yours
John
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IRLAND: Farnell - v - MMB

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26 JUL 1962



FCS/84/211

SECRETARY OF STATE FOR DEFENCE

ECHR: Farrell V UK

1. ✓ Thank you for sending me a copy of your minute of 12 July to Jim Prior. I agree with the line you propose and in particular that our negotiators should be given authority to settle on the best terms available within the revised, and substantially reduced, offer from the representatives of the applicant at the recent meeting.
2. As to the desirability of settlement, I very much agree with what you say in your minute. I understand the Commission has confirmed its previous confidential provisional indication that it is minded to find the United Kingdom in breach of Article 2. A finding that we were in breach of the Article guaranteeing the right to life would be most serious and damaging to our general position on Human Rights issues. Specifically, if the case then went to the Court, as must be expected, and the finding were confirmed in a judgement, that would probably entail a change in UK law and practice on the use of force in response to serious crime, which would be most unwelcome. Now that the applicant's representatives have dropped their demand for an admission of liability we have the opportunity to avert this by payment of money and the recent demands are far more reasonable. I do not think we should allow this opportunity to slip by driving too hard a bargain.
3. As to quantum, I understand that the Commission, having apparently put pressure on the applicant's representatives to moderate their excessive demands, is not minded to exert itself to help us to beat them down further. This does not mean we should not use every argument at our disposal to achieve the lowest possible figure. But it is further
/argument

CCPE

NRPM

CDP 19/7



argument for giving our negotiators discretion.

4. I was glad to learn that the other potentially damaging application against the UK in Strasbourg alleging a breach of Article 2 arising from events in Northern Ireland - the application by Mrs Stewart concerning the death of her son after being struck by a plastic baton round - was last week ruled inadmissible by the Commission as being manifestly ill-founded. By settling the Farrell case we have a chance to remove this awkward issue from the Strasbourg agenda for the present at least.

5. I am copying this minute to the Prime Minister, the Northern Ireland Secretary, the Attorney General, the Home Secretary and Sir Robert Armstrong.

A handwritten signature in dark ink, appearing to be 'G. Howe', written in a cursive style.

GEOFFREY HOWE

Foreign and Commonwealth Office

19 July, 1984

Ireland Nov 79

Farrer vs MOD

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01-405 7641 Extn 3201

ROYAL COURTS OF JUSTICE
LONDON, WC2A 2LL

16 July 1984

The Rt Hon Michael Heseltine MP
Secretary of State for Defence
Ministry of Defence
Main Building
Whitehall
LONDON S W 1

NRPT

CDP 16/7.

Dear Michael,

EUROPEAN COMMISSION OF HUMAN RIGHTS : FARRELL

Thank you for sending me a copy of your letter to the Northern Ireland Secretary of 12 July.

In the light of the circumstances in which it now seems that a settlement can be achieved - in particular, that it will be described, by agreement, as made on compassionate grounds and with no attempt by Mrs Farrell's representatives to gloss it as carrying any implication of acceptance of a breach of the Convention - I think that it is safe to go substantially above what we previously thought to be our ceiling for compensation and I share your view that even a full settlement of what Mrs Farrell's lawyers now ask for would be a cheap price to pay for averting a certain adverse finding by the Commission.

So far as the compensation is concerned, therefore, I recommend that our negotiating team should be authorised to settle for the best figure that they can achieve below £40,000, the negotiating tactics being left to their discretion. I would hope that they could achieve a settlement in the region of £35,000 but I would not set that as a ceiling or tie them to any figure.

As regards costs, I am sure that the request that the compensation paid to Mrs Farrell should not be raided

/by

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by the Legal Aid Fund for contributions in respect of the cost of her domestic proceedings is reasonable. I recommend that we agree to it without demur. The claim for sums of £10,000 plus VAT in respect of Counsel's fees and £15,000 plus VAT in respect of solicitor's fees does not strike me at first glance as manifestly extravagant but we shall need to see their itemised bills which can then be scrutinised by the Treasury Solicitor's litigation experts. If the bills bear out my impression that we are not being taken for a ride, I recommend that our negotiating team should be authorised to accept the claim without further quibbling. If, however, the bills show that the sums claimed are excessive beyond reasonable argument, I suggest that our negotiators should be authorised to make a counter-claim of whatever our litigation experts advise is a reasonable (but not ungenerous) sum. This could be coupled with an offer to abide by an independent assessment (e.g. by a High Court Taxing Master) in default of agreement.

I am copying this letter to the Prime Minister, the Northern Ireland Secretary, the Foreign and Commonwealth Secretary, the Home Secretary and to Sir Robert Armstrong.

Yours Gr.
Michael.

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IRELAND : Fawell v MOD : Nov 79

17-6 JUL 1984

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