

FROM:

THE RT. HON. LORD HAILSHAM OF ST. MARYLEBONE, C.H., F.R.S., D.C.L.

EFBB



HOUSE OF LORDS.
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CONFIDENTIAL

PRIME MINISTER

THE FUTURE OF THE TOP SALARIES REVIEW BODY (TSRB)

WITH DN?

Nigel Lawson sent me a copy of his minute of 28th October about the future of TSRB and I have since seen the comments made by Michael Heseltine and Richard Luce in their minutes to you of 14th and 15th November.

I can well understand the view that, so far as the senior Civil Service and senior officers of the Armed Forces are concerned, TSRB no longer produces satisfactory results, and that we would be better with some different system. I do think, however, that we need to assess very carefully how a decision to abolish the Review Body would be received in Parliament and by the public, and to know exactly what we would put in its place before deciding whether abolition is the right course. I too am particularly concerned with regard to the Civil Service, that we do not end up in a situation where senior officials find themselves having to negotiate their own salaries on behalf of the Government.

From my point of view the future arrangements for determining judicial pay are of the greatest importance. I could not consider undertaking the work myself; I should simply be flooded with competing pay claims from the different judicial groups which neither I nor my officials are equipped to evaluate. Such a situation would, moreover, be bound to sour my relations with the judiciary more generally. Rather than be responsible myself for determining judicial pay, I would therefore be bound to prefer to stick to TSRB as it is.

The judges are TSRB's largest client group (about 1,000 strong) and, unlike the senior Civil Service and the senior officers of the Armed Forces, there is no alternative pay negotiation machinery in existence into which they could be assimilated. Nor do I think that it would be at all satisfactory to contemplate such an arrangement. If TSRB goes therefore - and, as I say, I do not think it is yet clear whether this is the right course - I will need to have a new Review Body to undertake the work. It will be essential for this to be serviced by the Office of Manpower Economics (OME) as the present ones have been. OME have great expertise in dealing with the evaluation of pay claims, which I would wish to continue to use. Any new body would need to continue to advise me annually on judicial salaries. In most years this would simply be an up-rating report but, from time to time, as Nigel Lawson suggests, reviews of the judicial salary structure would also be required. Given that the last TSRB report revised the salary structure as a whole, I would hope, however, that the first two or three reports of a new review body would be for up-rating purposes only.

I see merit in the suggestion that any new body should have a substantial number of non-lawyers on it. This should help to ensure that whatever advice it might produce would gain public acceptance. I do not, however, believe that a new body should be constrained by the suggested link between the pay of a High Court judge and that of my Permanent Secretary. Because judges are recruited from the ranks of barristers who are in mid-career and at the peak of their earnings, there is already a very direct and market-related test of the adequacy of judicial salaries readily to hand. Moreover the position is irreversible; once a barrister has accepted a judicial appointment he is not allowed ever to go back to the Bar. Thus, if I start to get any significant number of refusals of appointment at any given level of the judiciary, that is the key signal that salaries at that level may need to be re-examined. But these matters are of detail which a new body could consider in due course.

I am copying this to the Chancellor of the Exchequer,
the Secretary of State for Defence, the Lord Privy Seal,
the Minister of State at the Privy Council and Sir Robert
Armstrong.

H: of S & M
25 Nov:85

ELONPOL : TSRB : Part 7.





cc BG Smith.

Ref. A085/2949

MR WICKS

Top Salaries Review Body

The Chancellor of the Exchequer sent me a copy of his minute of 28 October, proposing the abolition of the Top Salaries Review Body (TSRB) and new arrangements for determining the remuneration of the three groups of public servants concerned (senior civil servants, senior officers of the armed forces, and the judiciary).

2. I can well understand the Chancellor's dissatisfaction with the TSRB, given the political and public reactions to the recommendations in its last report and the Government's decision to accept them (subject to some staging).

3. But it is at least arguable that the TSRB's recommendations last time were right (or at any rate on the right lines, if not right in every detail); that it was right to implement them; that it would have been impossible for the Government itself to put forward proposals of this kind on its own initiative; and that implementing (with whatever political reluctance) recommendations from an independent body was in fact the only way in which it would have been politically possible for the Government to do something that needed and was right to be done.

4. The Chancellor's argument that the higher Civil Service "should be treated like the rest of the Civil Service" is tempting, but over-simplified. The arrangements for the rest of the Civil Service now, and any future long-term pay arrangements, include as an integral element a process of negotiation between the Government (represented by senior civil servants) and unions, and some right of arbitration. It is very



difficult to see how there could be satisfactory and defensible arrangements under which senior civil servants negotiated on behalf of the Government, or represented the Government at an arbitration hearing, about their own pay. (I got into enough trouble this summer for giving evidence to the Review Body, though I did so at their request and expressed no views on quantum.)

5. The argument that it is wrong to look at the TSRB groups horizontally, rather than "vertically in relation to the work forces to which they belong", is also an over-simplification. Of course they do need to be looked at in relation to "the work forces to which they belong", and the TSRB has always had regard to the relativities between the groups on which it advises and those below them in the Civil Service and the armed forces. But there is a close "horizontal" link between the open structure of the Civil Service and the two-star (and higher) officers in the armed forces, who work closely alongside each other particularly in the Ministry of Defence. The present arrangements at lower levels have had the effect that middle to lower ranks in the armed forces have moved well ahead of their counterparts in the Civil Service over the last five years, because recommendations by the Armed Forces Pay Review Body, invariably accepted by the Government, have consistently exceeded the pay increases for civil servants at equivalent levels. This has created some strain where civil servants and the military work close to each other, particularly in the Ministry of Defence.

6. The Chancellor argues that the TSRB does not achieve the claimed advantage of taking these "top people's" salaries "out of politics". I do not believe that that is in fact an advantage which has ever been claimed for the TSRB, or that salaries of public servants at these levels can be taken "out of politics". They are public servants, paid out of monies voted by Parliament (or, in the case of judges, out of the Consolidated Fund), and the Government is responsible for their



numbers and their rates of remuneration. The most that could be claimed for a system of independent review making recommendations to the Government is that it changes the nature of the political decision involved and the distribution of political responsibility and odium. The Chancellor's note seems to accept the case for independent review in the case of the senior officers of the armed forces and the judiciary, even though the remuneration of these groups is no less a political subject than that of senior civil servants.

7. If I can put the argument in more abstract terms, I think that it runs something like this. In determining the levels of remuneration of public servants the Government is liable to find itself in a dilemma as between two separate responsibilities which point in different directions: its responsibilities for the management of the economy and the control of public expenditure - which lead it to want to keep increases in public service pay as low as possible - and its responsibilities as an employer of staff and manager of a service - which may sometimes point towards higher levels of increases in public service pay. In the case of most of the Civil Service, the obligation to negotiate with Civil Service unions provides in effect a mechanism which mediates between these responsibilities when they diverge, and an assurance to the staff concerned that the considerations relevant to the second set of responsibilities and to their interests are not overlooked or lightly set on one side. In the case of the higher Civil Service, as in the cases of the armed forces and the judiciary, there is no process of negotiation, and certainly in the case of the higher Civil Service (and probably in the other two cases also), no such process is realistically possible. The existence of an independent review body is in these circumstances an alternative mechanism for arriving at a judgment, which the Government and the staff concerned in effect both accept as a substitute for the negotiation which is not possible.



8. An independent review body thus provides the staff on whose remuneration they make recommendations and the public with an assurance that the decisions of Government on that remuneration will not be merely arbitrary, and determined solely by reference to the Government's wider responsibilities for the control of public expenditure, in that their existence obliges the Government to justify its decisions by reference to the published judgments and recommendations of the body. The Government is not obliged to accept these recommendations; but accepts an obligation to justify publicly, to Parliament, any decision to override or depart from them. If on the other hand the Government decides to accept the body's recommendations, the fact that its decisions are based on these recommendations dilutes the political odium which would otherwise fall undiluted on the Government alone.

9. It is no doubt for reasons of this kind that the pay of the higher Civil Service has invariably, since 1919, been determined in the light of recommendations from an independent advisory body of some kind.

10. The TSRB, under Lord Plowden's chairmanship, has in fact been a rather politically sophisticated body. Lord Plowden recognises as well as any one the political dimensions and delicacy of the issues which the TSRB faces, and has, in my experience at least, gone to great lengths to pitch the TSRB's recommendations at levels which will not be intolerably difficult for the Government in political terms. (For example, I am in little doubt that, if the TSRB is still in business for a 1986 review, its recommendations will create little or no embarrassment for the Government.) There are some who would say that the TSRB's latest recommendations were embarrassingly high because he had been a little too successful in that respect in previous reviews. The TSRB certainly cannot be accused of having excessive regard to "comparability": their recommendations in all recent reviews would have been much